

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

October 7, 2004

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, October 7, 2004, at 12:00 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Morris K. Dunlap, Chair; Harold Warner Jr. Vice-Chair; Darrell Downing; John W. McKay Jr. (in @ 12:08 & out @ 4:40); Bill Johnson (in @ 12:05); Bud Hentzen; Elizabeth Bishop; M.S. Mitchell; Denise Sherman; Gary K. Gibbs (out @ 6:26) and Frank Garofalo. Bob Hernandez; Ronald Marnell and James Barfield were not present. Staff members present were: John L. Schlegel, Secretary; Dale Miller, Current Plans Supervisor; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Scott Knebel, Senior Planner; Jess McNeely, Associate Planner; Jamsheed Mehta, Transportation Supervisor; David Barber, Land Use Supervisor; and Rose Simmering, Recording Secretary.

❖ PLANNING COMMISSION ITEMS

1. **Approval of MAPC September 9, 2004, and September 23, 2004 meeting minutes.**

MOTION: To approve the MAPC for September 9, 2004 and September 23, 2004 meeting minutes.

WARNER moved, **GAROFALO** seconded the motion, and it carried (9-0).

❖ MPO AGENDA ITEMS

2. **Transportation Enhancement (TE); Review projects being prepared for submission to KDOT. Presentation by Jamsheed Mehta**

Transportation Enhancements is a federal program under ISTEA and TEA-21 legislation that provides funding for pedestrian/ bicycle trails, scenic/ environmental projects, and preservation of historic transportation structures. All tax-levying entities are eligible to apply for up to 80 percent of the cost of an "enhancement" project, provided that the project meets at least one of 12 categories. The Kansas Department of Transportation (KDOT) administers this program in Kansas and approximately \$17 million has been set aside by KDOT for this round of applications. KDOT will review all projects submitted for the TE 2006-07 program, and award the federal share to projects using its selection criteria. Project applications from communities within the Wichita Metropolitan Planning Area must submit their applications through the Wichita-Sedgwick County MPO.

The MAPD has received eight applications from communities within the planning area (location maps attached):

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| City of Andover: | One-mile pedestrian/bicycle pathway along Andover Road connecting two existing pathways at Central Avenue and 13 th Street |
| City of Cheney: | One-mile pedestrian/bicycle pathway connecting Cheney's new Community Park to 6 th and Main Street. |
| City of Colwich: | (i) Environmental mitigation of runoff (drainage detention pond) near N. 167 th Street and W. 53 rd Streets; (ii) Pedestrian/bicycle pathway linking to and around the drainage pond. |
| City of Goddard: | Pedestrian/bicycle pathway over a half-mile section of railbanked corridor. (presented through Prairie Travelers, Inc.) |
| City of Wichita: | (i) Preservation of the historic 13 th Street (Minisa) Bridge over the Little Arkansas River; (ii) Half-mile pedestrian/bicycle pathway over the abandoned UP Railroad corridor in the Delano District, from Arkansas River Trail to Seneca Street; (iii) 2.26-mile pedestrian/bicycle pathway connecting the I-135 Trail (from Grove Park) to the K-96 Trail (in Grove Park); (iv) 4.95-mile pedestrian/bicycle pathway extending the Arkansas River Trail through Chapin Park, and connecting to the Gypsum Creek (Turnpike) Trail in Planeview Park. |

As part of this year's application development process, MAPD provided opportunities for public support and review of projects. In addition to holding a special public meeting on the enhancement program, staff has made presentations before several District Advisory Boards, Wichita Park Board, the GreenWays Alliance, and the Technical Advisory Committee to receive input and support for these projects.

RECOMMENDED ACTION: Review projects and provide any comments on the Transportation Enhancement applications. The MPO will be asked to endorse these projects at the October 21, 2004 meeting.

JAMSHEED MEHTA Planning staff presented report.

MITCHELL What are the Prairie Travelers, and who are they?

MEHTA The Prairie Travelers is a not for profit organization entrusted the responsibility of 8 miles of what used to be the CKR tracks from 167th Street near Goddard to Garden Plain. They are the group identified by the Surface Transportation Board as the operators and the folks who would maintain a trail. As you may recall, CKR tracks were not abandoned, they railbanked.

MITCHELL What would be their relationship for this one mile section?

CECILA KELLENBARGER, 7211 Bainbridge, Wichita, KS 67226, I am treasurer of the Prairie Travelers Association. We have met with the City of Goddard and the Goddard Planning Commission and they have approved this plan. We have worked with their attorney to verify that if something should happen to the rest of the trail that this would still stay as part of Goddard Park. Prairie Travelers then has gone and got approval from the Goddard City Council to apply for this funding.

MITCHELL If something happened and your organization were not able to fund the responsibility for the entire part of the trail where would that leave this section?

KELLENBARGER We will have a written agreement that if something happens that Goddard will take over this section, and another trail group will do that and we will have that written up by the attorney's in Goddard.

MITCHELL Your group has the authority to legally transfer your rights to the City of Goddard?

KELLENBARGER We can do a joint venture or a long-term lease.

GAROFALO The \$17 million, is that considerably more than what the State has been doing?

MEHTA Whenever the State decides to combine two years worth, and this time they are doing 2006 & 2007 combined, we stand a better chance when they are grouping many years together so that we get more projects approved in one go.

GAROFALO I am pleased on the south extension, that will be a nice improvement.

MEHTA We have been to all the District Advisory's Boards for all of the Wichita projects. There is no action required but if you have comments to submit to us or to the sponsors this would be the time.

BISHOP So the City of Wichita has to sign off on it?

MEHTA Yes, the City of Wichita is a sponsor for four projects.

HENTZEN Of the bike paths or trails that are not constructed at this time, do you have or do we have as MPO, the ownership or the real estate where you are talking about putting these paths? You used the term rail banking does that mean we own it or have control over it?

MEHTA There is one project here, the City of Goddard's project which involves a railbanked section so if it is specific to that project the Prairie Travelers do not own it. The Prairie Travelers have been given the rights and the responsibilities to maintain it and build a trail on it.

HENTZEN Who gave them that right?

MEHTA The Surface Transportation Board, that used to be the ICC and they have reconfigured and now they are the Surface Transportation Board, it is a Washington, DC based organization and a federal government entity.

HENTZEN Does any of your new paths that are not yet built are they through an individuals property?

MEHTA If there are short sections that is when the Public Works Dept. and the Property Management Department will approach the property owners and ask for the additional easements or an outright acquisition. Usually it might be a very short section.

3. Transportation Improvement Program (TIP); Review of projects submitted by member cities for federal funding, and set a public meeting date to amend the TIP. Presentation by Jamsheed Mehta

Several cities have submitted project requests for federal funding. However, federal law requires that each year in the TIP be fiscally constrained. It is therefore necessary to prioritize and program eligible project requests for federal funding. Staff will provide technical and fiscal information on the TIP, including recommendations from the Technical Advisory Committee (TAC), at the October 7, 2004 meeting of the MPO. The MPO will be asked to formally amend the TIP on October 21, 2004.

The TIP is a listing of all regionally significant transportation projects - including federally funded projects - within the Wichita metropolitan planning area. The Wichita-Sedgwick County MPO has the responsibility for programming all federally funded projects within the area.

Three categories of federal funds are available to the MPO for programming: 1) Surface Transportation Program (STP); 2) Congestion Mitigation & Air Quality (CMAQ); and 3) Bridge rehab or replace (BR) funds

The Current TIP (See Attachment 1) is fiscally constrained, and includes 75 projects funded using these federal programs. The MAPD has received additional project requests (See Attachments 2 and 3) for 11 new street/bridge improvement projects, four new transit projects, and three requests for increase in federal funds. If all projects are included in the TIP as requested by the sponsoring cities, then the TIP will be significantly over-programmed in the latter three years of the TIP (See Attachment 4).

The MAPD and the Technical Advisory Committee (TAC) has applied a Project Selection Criteria (PSC) to all capacity-enhancing street projects to prioritize improvements based on volume/capacity, safety, pavement condition, and cost measures. The TAC reviewed the project ranks (See Attachment 5).

The TAC recommends that the MPO amend the TIP (See Attachment 6). In addition to three new street-widening projects, the TAC recommendations include two project cancellations, accelerating the construction year on one project, four new transit programs for three years, additional federal finding for two existing projects, and consolidating two widening projects.

Recommendation: Provide comments regarding the federally funded projects, and set a public hearing date to amend the 2004-2008 TIP on October 21, 2004.

Attachments:

1. Projects in the Current TIP (STP, CMAQ and BR fund)
2. List of project requests received for TIP Amendment
3. Location map of project requests received for TIP Amendment
4. Listing of all requested projects added to the Current TIP
5. Rankings for new capacity-enhancing projects
6. TIP Amendments recommended by the TAC

JAMSHEED METHA Planning staff presented report.

MCKAY You said 8 of these 11 TIP Applications on Attachment 2 you think qualify?

MEHTA Only 8 out of 11 qualify to be ranked as capacity enhancement projects. The others are overlay and maintenance projects and cannot be ranked in that same category as a typical street widening project. So those did not get ranked they are still on the table for your consideration but not with your typical widening project where you use federal funds.

MCKAY You said Item 6, the 159th Street East Bridge at over KTA.

MEHTA The bridge rating on this bridge is very good. It has to be at least below 80 on a scale of 100 to qualify for rehab and if it was below 50 it would qualify for a replacement. This bridge has a very good rating so federal highway will not approve of it.

DUNLAP I have a question if a small community or any community's Council decides to increase the share that it can move me up in the ranking, so I could get it done sooner?

MEHTA Yes, you could at least compete better with the pool of projects that you have at that time.

MCKAY On Attachment #5, Item 4, that property line you talk about the maintenance the north side of 53rd is Kechi, and the south side is Bel Aire how do you work out the maintenance on that?

MEHTA It would be up to the project sponsor but here what they are saying in the application that if you approve it, they will pave it to whatever standard they are asking permission for and the application is not coming from Kechi, it is coming from Bel Aire, it doesn't matter who the project sponsor is they would have to have some agreement to dig into Kechi's right-of-way, but Bel Aire could be paving a street a few miles away from Bel Aire for that matter.

MCKAY The trend has been to annex clear up to the right-of-way and not take the right-of-way.

MEHTA In this case I am not sure.

GAROFALO On attachment #5, does this mean that these projects are given priority over other projects in those years that are mentioned? In other words are other projects being bumped for these?

MEHTA The projects which are simply adding federal funds for existing TIP projects were considered to be okay by the TAC. This short list here are all those projects that had some widening or capacity improvements involved. If it did not involve capacity improvements it was simply repaving.

BISHOP If these are amendments I would like to know, I can see what is being changed but from the standpoint of being added, but I can't see what is not included. We have the current in here but I don't have total of...

MEHTA That will be on attachment 6, the next slide.

WARNER Who is the TAC?

MEHTA The TAC is an Advisory Board to you, and they are made up of representatives of KDOT, MAPD, City of Wichita, Sedgwick County, these are the voting members and there are 3 to 4 in each of these groups. Every city and every entity within the MPO Planning jurisdiction is invited and we have some lively discussions every month, every 4th Monday of the month.

BISHOP Why was the Mt. Vernon Bridge and Dry Creek taken out?

CHRIS CARRIER PUBLIC WORKS DIRECTOR That was done because the overall condition rating of the structure wasn't as bad as bridge inspections once showed it so we determined that it can stay in place for a while.

BISHOP That was just on the roadway?

CARRIER Road and structural condition of the bridge.

MEHTA The other project that is proposed to be taken out of the five year program is Bel Aire's Woodlawn Rd. from 37th to 45th. I have given you a letter from the City Administrator of City of Bel Aire dated August 30, 2004. It is very clear "The Woodlawn project that was originally submitted has been rescheduled for improvement in 2013 in accordance with the adopted Bel Aire Transportation Plan." If you had representatives from Bel Aire today, you would have a chance to hear whether they mean to keep this project in or out.

DUNLAP If we eliminate a project in 2005 doesn't it again usually appear in 2006?

MEHTA I am talking about one that is removed completely out of the program, out of the five years.

DUNLAP So it doesn't reappear?

MEHTA If it does reappear it will go through the ranking system and have to stand on its merits.

MITCHELL On page 2 of attachment 1 the reference to a bridge 47th Street South at Santa Fe, I thought that was a major bottle neck as far as drainage for the big slue area was concerned and I am worried that \$425,000 is not enough money for a complete rebuild of that.

CARRIER You could be right, we haven't started anything as far as the design of that facility yet and as we go through future TIP amendments if that in fact turns out not to be an adequate amount of money we will have to make the appropriate adjustments at that time. I cannot tell you right now where that number came from. All of these numbers are subject to change as they get closer to the actual time of construction.

BISHOP What is the total cost column indicate?

MEHTA The cost of the projects that the MPO is responsible for under STP, CMAQ, and BRIDGE? It is an average of \$10-11 million a year.

GAROFALO Jamsheed, please go over the Bel Aire concerns.

MEHTA In your existing TIP from five years ago Woodlawn has been in from 37th Street up to 45th Street, one mile worth \$2.7 million. Initially you approved it for 2005, and over the years they asked for it to be amended for 2006-2007. It is based on your long range plans and it is the MPO long range that this project has to be consistent with, not a local plan.

The City of Bel Aire did its new plan 2004-2024 Bel Aire Transportation Plan in which this section which is already in the TIP is identified in Bel Aire's 20 year plan as requiring a overlay for now, which is good for 8-10 year, and then doing a 3 lane on it which is contrary to the 4 lane that is in the MPO's long range plan. Their request is fine as long as you also amend your long range transportation plan and then you can accept the TIP proposal of 3 lanes, but right now you are less than a year away from approving or updating your own long range plan. If Bel Aire request for making it 3 lanes is modeled and we show you it is okay, then you may accept three lanes concept instead of the 4-5 lanes.

But they want us to push it out of this 5 year program and swap it. In their letter dated October 8, 2004, they are saying that they want to exchange the project for 45th Street, which is also in your long range plan, except that you are calling for 4 lanes and they are proposing 3 lanes. They want to do a swap. For lack of a better term, that's not quite legal. You can't swap projects. You did not provide Bel Aire with \$2.7 million and then ask Bel Aire to figure out where they want to put the money. You authorized these funds for a project. One can't push a good project, get it in the TIP and then substitute it for one which otherwise can't stand on its own merits. Bel Aire doesn't recognize this argument.

Another thing Bel Aire is concerned about is 53rd Street and why wasn't it ranking high enough. Well, it ranked 4th and I think it ranked fourth only because of an error on our part. Because at TAC we discussed that the chip and oil product is a temporary solution and you will be spending federal funds for less than the design life. You can do resurfacing with these types of funds if the MPO is okay with it, but this is an unpaved road and it proposed as a temporary fix, not really a resurfacing project.

On 45th between Oliver and Woodlawn, not only is it a question of how many lanes, because the MPO plan calls for 4 lanes and Bel Aire wants to build a three lane road, but you need to know that their proposal is to build a roundabout at the Woodlawn intersection. If you approve their concept then, by default, you are approving one lane in each direction. Your plan today requires two lanes in each direction.

BISHOP In reality 2-3-4 lane roundabouts are not difficult at all. They work good at higher speeds and do without stop lights.

METHA Those roundabouts would have terrific radii to work for higher speeds, they would not fit in the 120 foot right-of-way. We asked Bel Aire to wait until the MPO's Transportation Plan is done but there is haste on their part. If they were present at the TAC meeting two weeks ago that would have helped, and this would have been another opportunity today.

It was very clear that they asked for a swap and that swap in our mind is not legal. They are saying if you are going to not approve 45th, then they want Woodlawn back, which is a good idea but that Woodlawn project is approved as a 4-5 lane project. To sum it

up, the City of Bel Aire can decide whether it wants its original Woodlawn in or out, and provided you understand that it is conforming to your long range plans and vision. Whether it is 45th or 53rd Street, that is your choice, not Bel Aire's.

GAROFALO I think Bel Aire needs to tell us why they need to swap it and what the reasons are, because five years ago they were begging for Woodlawn and we listened to that and I think we agreed and put it in.

MEHTA We will address their concerns and I am sure they will be present at the next MAPC meeting. If you look at their October 8th memo on point #7 they feel they have a long range transportation plan and it is consistent with their plan. The submitted projects were completely in sync with Bel Aire's long-range plan and does not believe it is MPO's position to dictate to the City of Bel Aire what roadway improvements within Bel Aire should be made.

GAROFALO Even with that they do not say why.

MEHTA Their transportation plan does not show Woodlawn as their top priority now. It is showing this Woodlawn Road from the railroad tracks for 2 miles up to 53rd Street and all it means is an overlay that is their third highest priority. Our plan is to answer their letter before the next MAPC meeting.

MOTION: Set a public hearing date to amend the 2004-2008 TIP on October 21, 2004.

JOHNSON moved, **WARNER** seconded the motion, and it carried (9-0).

DUNLAP There is a move to revise the membership of the MPO and that will play into this at some point. But right now the MPO is the Metropolitan Planning Commission.

❖ **PLANNING COMMISSION ITEMS**

4. **Case No.: DR04-04** – City of Wichita, c/o Metropolitan Area Planning Department request McAdams Neighborhood-wide Rezoning Proposal – Adoption of Proposed Rezoning of Certain Properties in the McAdams Neighborhood

Generally located East Boundary – Hydraulic Street, North Boundary – 17th Street, West Boundary – Washington Street, South Boundary – Murdock/8th Street.

BACKGROUND:

In June 2003, following two years of development and neighborhood input, the Wichita City Council adopted the *McAdams Neighborhood Revitalization Plan* to serve as a blueprint for the revitalization of this unique neighborhood. The current zoning pattern for the McAdams neighborhood dates back over 50 years, and reflects a different vision for most of the neighborhood than has been identified in the recently adopted *McAdams Neighborhood Revitalization Plan*. One of the priority action items identified in the Plan is the creation of a zoning approach that better reflects existing land use and future redevelopment opportunities.

Problems with Existing Zoning

The vision of the *McAdams Neighborhood Revitalization Plan* is to revitalize and re-populate the McAdams neighborhood by encouraging new predominately single-family housing on vacant lots in the neighborhood. However, virtually all of the residential areas are zoned "B" Multi-Family District which allows and encourages high-rise apartments and project housing, rather than single-family homes. This zoning also allows perceived undesirable uses such as commercial group homes and correctional placement homes. The "GC" General Commercial District zoning along 9th and 11th Streets also allows uses such as recycling processing centers, boarding kennels, welding shops and night clubs which are deemed by the neighborhood association to be undesirable adjacent to surrounding residential uses. Property owners are reluctant to re-invest in their properties due to inappropriate uses that are allowed under the current zoning.

The McAdams Neighborhood Rezoning Committee, consisting of neighborhood and city representatives, has recently been formed to help recommend a new zoning scheme for the McAdams neighborhood. This rezoning scheme will address all properties located within the following area: **17th Street on the north, Hydraulic on the east, Murdock / 8th Street on the south, and Washington on the west.**

A new zoning approach will be recommended to the Wichita City Council based upon the following principles:

1. No property will be rezoned against the wishes of the property owner. No changes will be proposed that will prevent residents, businesses or landlords from continuing their existing operations or uses.
2. No property will be rezoned to a higher intensity zoning classification. This is necessary in order to streamline the neighborhood rezoning initiative, while at the same time independently preserving full notification requirements normally associated with any property rezoning proposal for higher intensity uses.
3. Neighborhood-wide rezoning will be proposed that accommodates the wishes of property owners while facilitating future anticipated /desired land uses as envisioned in the *McAdams Neighborhood Revitalization Plan*. There will be no rezoning fees charged to property owners affected by this rezoning initiative.
4. Neighborhood-wide rezoning will be proposed that reflects the support and endorsement of the McAdams Neighborhood Association and the 21st Century Coalition for Neighborhood Revitalization.

Work began on the McAdams neighborhood-wide rezoning initiative in April of this year. An inventory and analysis of existing land uses and zoning was completed in May 2004. The Rezoning Committee subsequently completed a preliminary rezoning scheme that was presented at two neighborhood public meetings held on June 24th and June 26th at the McAdams Recreation Center. Letters were sent to all affected property owners advising of the rezoning initiative and inviting them to attend the neighborhood meetings. Copies of the existing zoning and proposed rezoning were also made available at two business establishments located within the McAdams neighborhood. Based upon public comment received at those meetings, the McAdams Rezoning Committee prepared a revised final proposed rezoning scheme dated July 19, 2004.

On August 2, 2004, the final proposed rezoning scheme was presented to members of the District I Advisory Board, who unanimously approved the proposal. On August 5th, the proposed rezoning scheme received the endorsement of the Advanced Plans Committee.

On August 19, 2004, the Metropolitan Area Planning Commission set a public hearing date of October 7, 2004, to receive comments on the proposed rezoning scheme. Letters accompanied by detailed map sets that outline the nature of the proposed rezoning change have been sent to all property owners advising of the public hearing date, and advising of the opportunity to have their property remain as current zoned.

Summary of Proposed McAdams Neighborhood Rezoning:

1. Most residential properties currently zoned "B" Multi-Family District would be rezoned to "SF-5" Single Family District. Those properties containing duplex, four-plex or apartment-type housing would be rezoned to a zone that better fits the existing use ("TF-3" Two-Family District, "MF-18" Multi-Family District, or "MF-29" Multi-Family District).
2. Areas targeted in the McAdams Plan for future single attached / two family home infill development would be rezoned "TF-3" Two Family District.
3. Most of the "GC" General Commercial zoning along 9th Street and 11th Street would be rezoned to "SF-5" Single-Family District in order to reflect current residential use.

Note: The attached map dated 7/19/04 showing the proposed Rezoning for McAdams will be subject to further revisions up to and including October 7, 2004, in order to accommodate those property owners who file a written request to MAPD to have their property left as currently zoned.

CASE HISTORY: N/A

ADJACENT ZONING AND LAND USE:

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|--------|---------|---|
| NORTH: | "B" | Residential uses north of 17th Street. |
| SOUTH: | "LI" | Industrial uses adjacent to and south of Murdock. |
| EAST: | "B, LC" | Predominately residential uses east of Hydraulic. |
| WEST: | "LI" | Industrial uses adjacent to and west of Washington. |

PUBLIC SERVICES: N/A

CONFORMANCE TO PLANS/POLICIES:

Wichita-Sedgwick County Comprehensive Plan: The proposed rezoning for the McAdams neighborhood is consistent with the low density residential use patterns prescribed for this area on the "Wichita Land Use Guide" map. Strategy XI.C4 of the Comprehensive Plan advocates the use of rezoning as tool in older neighborhoods to "prevent the encroachment of inappropriate development of a more intensive nature".

McAdams Neighborhood Revitalization Plan: The Rezoning proposed for the McAdams neighborhood is consistent with the recommendations contained in the McAdams Plan, and constitutes appropriate plan implementation action.

RECOMMENDATION: The Rezoning proposed for the McAdams neighborhood is a tool to help implement the vision and direction contained in the McAdams Neighborhood Revitalization Plan. Accordingly, planning staff recommends that the request be APPROVED as submitted, subject to those revisions to the McAdams Revised Rezoning Map dated 7/19/04, necessary to accommodate all written requests from property owners requesting to have their zoning left as is, and received by the MAPD by the end of business on October 7, 2004.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood. The Rezoning proposal is consistent and reflective of the present character and uses within the neighborhood. The opt-out provision allows property owners to remain as currently zoned, if they so choose.
2. The suitability of the subject property for the uses to which it has been restricted. The Rezoning proposal is intended to effectively implement the recommendations and direction contained in the McAdams Neighborhood Revitalization Plan. This proposal provides tools to help encourage the realization of the full development potential and opportunity envisioned for this unique neighborhood in Wichita.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The Rezoning proposal will have no adverse impacts on nearby properties. In fact, it could be argued that it will have a beneficial, long term social and financial impact on adjoining neighborhoods and the downtown area of the City of Wichita.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The requested change is consistent with policy direction contained in both the Wichita-Sedgwick County Comprehensive Plan and the McAdams Neighborhood Revitalization Plan.

5. Impact of the proposed development on community facilities: No new development is proposed in association with, or as a result of, the adoption of the Rezoning proposal.

DAVE BARBER Planning staff presented report.

DUNLAP Dave, will you explain the notice area and how they got notification?

BARBER Every property owner within the target area, as well as, within 250 feet of the perimeter of the target area was sent a written letter of notification explaining the existing and the proposed zoning initiative. There were a series of maps sets attached to each letter showing the existing zoning and the proposed zoning changes. We have heard from a total of four people over the last month since the letter went out requesting that they stay as currently zoned.

GAROFALO In the letter of notification to the property owners, was the deadline put down in the letter?

BARBER Yes, it is close of business today.

DUNLAP This is not the first time we have been presented with a neighborhood rezoning like this, and this one has gotten a lot less fire then the previous one.

CARL NEIL, 809 N. Matthewson, Wichita, KS Is your whole plan to come in and uproot all the people that live in that area and run a highway through, or are you just zoning to change what? Is the change good for our community?

DUNLAP What we are doing is the previous zoning was industrial and anyone could come in there and build a manufacturing plant, or an asphalt plant, or all those other things and we are doing now is changing zoning that is for individual homes and for redevelopment. In general terms I would answer your question that, yes this is very good for the neighborhood and it will preserve what is there and improve it.

MCKAY It is not all industrial but it is predominately "B" Multi-family, and this initiative is to bring it into conformity with neighborhood policy.

WILLIAM DRAPER, B & B Real Estate Investors We own a vacant lot at Hydraulic Street just north of 13th Street. My thoughts on this subject are when people give up rights to lucrative zoning, they give up value in their property. If they give it up without compensation or tangible promise of something in return they have given up some of their life savings. If I own property that is zoneable for limited commercial or industrial I have more options. I would caution anybody that hasn't opted out to really consider possibly doing that before the deadline and think about the value that you might be giving up. Things like cottage industry, things like arts, musicians, attorneys, maybe even a dentist that is retired and practices occasionally and takes people on a charity basis that wouldn't disrupt the pattern of residential live.

GENE JACKSON I own property at 13th & Ohio and I operate the Jackson Mortuary My main concern about the rezoning is that it does not allow in its present form a commercial venues such as hotels, Burger Kings, attorney's offices or things of that nature where people can get off I-135 at 13th Street. When you have homes being built right on 13th and Indiana as it is right now that negates in a sense commercial entities coming in there and making an impact in the community. It is nice to have a residential area but also understand there has to be some employment for those people who live in those residential areas. It doesn't seem fair when you tie up one of the best intersections for I-135 and 13th Street for just residential that will offer nothing the community as a whole. Especially capturing economic value from people who travel I-135 from Oklahoma to McPherson or wherever they are going.

BISHOP I would like to say as this proposal for rezoning is based on a neighborhood plan that took a number of months and many meetings and quite a bit of input from the people that live in that community. One of the aspects about zoning that we often overlook is that zoning does not just mean what the use is on the property that I own. It is the zoning around the property that I own that it is often crucial, especially if what I am concerned about is my residential property and that zoning around that property can be a protection. The goal of this plan was to take properties and zone them in such a way as they are currently being used and when the zoning classification is industrial or multi-family ... that can create a real problem for that property. This will bring the zoning in conformance with the actual uses.

MCKAY Mr. Jackson if you will look at the pink area on the map that is all commercial like you were talking about. There is one piece on Indiana that has been taken out, is there a reason for that Dave?

BARBER The property owner has requested that it be rezoned from general commercial to residential because he is in the process of building homes there.

MCKAY We haven't changed anything along 13th Street.

SHERMAN Dave, I want clarification on Item #1, my question is at 13th and Hydraulic where there is an abandoned gas station or a commercial property that is closed, and it is not being used right now, what happens if someone bought that property and wanted to reopen that business they can or not?

BARBER Yes they can because, we are not proposing any zoning change at that site. If it was previously in compliance with the Zoning Code, and it goes out of business and a new business restarts and it is in compliance with the Zoning Code then it is entitled to do so. If it was a lawful non-conforming use then it could not be restarted after a 12 month period.

SHERMAN Does it matter if it is the same exact business?

BARBER No, it is the use of the land not the owner of the land.

SHERMAN I want to be clear about the opportunities for economic development, how does the rezoning affect that?

BARBER There has been no diminishment of economic development along 13th Street other than the north side between I-135 and Ohio, which is park land, and we have rezoned that and taken out the commercial use because it is in public park use. One piece by Indiana where the property owner has requested it be downzoned to reflect the residential development going in there. Other than that, there has been no change in the existing commercial zoning along 13th Street. There has been a little bit of diminishment along 9th Street, in terms of existing general commercial zoning and a substantial diminishment along 11th Street where there is very little existing general commercial zoning.

DUNLAP Conditions change over a period of time and should there be a development that would like to occur they can always come back and ask for rezoning or a Conditional Use at that time?

BARBER That is correct.

MOTION: To Approve the McAdams Neighborhood Rezoning in accordance with staff recommendations.

DUNLAP moved, **WARNER** seconded the motion, and it carried (11-0).

5. Sign Code Amendments, presentation Kurt Schroeder.

On May 4, 2004, the City Council passed a six-month "Off-Site Billboard Moratorium" to allow time to conduct a study of billboard sign regulations, to obtain public comment on current or proposed billboard sign regulations, and to develop and adopt any appropriate Sign or Zoning Code amendments relating to off-site billboard signs. The Council set an initial four-month target for completion of the above, with an option to extend an additional two months, if necessary. On August 17, 2004, the Council extended the moratorium until the end of the six-month moratorium period (until 11/4/2004). The extension provided staff additional opportunity to complete review of proposed code changes with the billboard sign industry *before* final ordinance presentations/hearings before the Metropolitan Area Planning Commission (MAPC) and the City Council.

The draft proposals first presented to the billboard sign industry in August included nearly every suggestion made at District Advisory Boards; MAPC; and/or by individual Council members in Council workshops in May and June or in follow-up Council member meetings with staff. Presently, the billboard sign industry, staff and City Council concur on nearly all of the code change "alternative" recommendations and the ordinance amendments as presented.

Attached is a spreadsheet comparing current Sign Code regulations to the following: (1) staff's initial August 3, 2004 draft of suggested code changes (including DAB, MAPC and Council suggestions); (2) an August 20, 2004 revised draft of proposed code changes as edited/prepared by the billboard sign industry after it's initial meeting with staff; and (3) a recent summary of proposed code changes, including joint staff and industry "alternatives" developed during September after the August 25, 2004 meeting between staff and industry representatives.

At its September 28, 2004 City Council workshop, the Council directed staff to prepare proposed Sign Code ordinance amendments reflecting the joint staff and industry "alternatives" on which both staff and industry have concurred (agreed upon alternatives listed in the 4th column of the attached spreadsheet). The attached "DRAFT" ordinance was finalized for MAPC review after the 9/28/04 City Council Workshop.

The billboard sign industry has indicated that they will not oppose the following significant Sign Code changes:

- Revising definitions for off-site billboard signs, including a new classification/definition for smaller billboards ("junior billboards"). This proposed amendment will greatly reduce the maximum allowed size of new or replacement billboards located on "LC"-zoned lots that front arterial roads (300 square foot maximum as opposed to current 672 square foot maximum, or up to 825 square foot maximum with allowed extensions).
- Removing the linear frontage of any parcels/lots located in CUPs, PUDs or Zoning Overlays (that do not allow off-site billboard signs) from the minimum linear measurement calculation within/between mile section line roads. This proposed amendment will significantly reduce the maximum number of billboard signs allowed in most areas of the City, and would significantly reduce the number of billboard signs that are currently allowed on "LC"-zoned lots.

In addition, the proposed amendment to Section 24.04.222 would limit the maximum number of off-site billboard signs on "LC" lots within any mile section to no more than two (a maximum of up to three such signs are currently allowed).

- Eliminating the current code exception for increased billboard sign height when any part of the sign is located within three feet of a building roof or parapet of a one-story building (signs could still be cantilevered over such buildings, however).
- Addition of language requiring that any building over which a cantilevered billboard sign is to be erected is constructed PRIOR to issuance of a new off-site billboard sign permit.
- Significantly increasing the minimum distance of new or replacement billboard signs from residential structures (from 150' or 75' to 300' or 150'). There has been continuing discussion between the industry and staff on this issue, specifically

relating to how the new distance minimums are to be measured. Some general concurrence/consensus has been reached, however (see further detail on page 4 of the attached spreadsheet).

The October 7, 2004 MAPC Agenda item is a public hearing for proposed Sign Code ordinance amendments, and MAPC comments/recommendations will be forwarded to the City Council for its hearing on the ordinance amendment adoption. The amended Sign Code ordinance is scheduled for presentation to the City Council (and for first reading) on October 19, 2004, with the second/final reading scheduled for November 2, 2004. This anticipated schedule will provide an amended ordinance by the November 4, 2004 Moratorium expiration date.

KURT SCHROEDER Office of Central Inspection Superintendent presented the staff report.

GAROFALO On the junior billboards, I just want to make clear that you are talking about a limit of 300 square feet?

SCHROEDER That is correct, if it is on an arterial road. The way this is written is that if it was on a highway on a Limited Commercial lot you could still have a bigger billboard on a highway, but in the city on arterials you are generally moving slower, and wouldn't expect to see maybe a big billboard, you would have the 300 square feet maximum as opposed to 676 square feet that are currently allowed.

GAROFALO On the distance from the residences you talk about 150 feet or 75 feet, and increasing that to 300-350 feet?

SCHROEDER It is basically 300 feet from any lot line that is residentially zoned or has a use that is residential use on it that lot line it has to be 300 foot minimum from where the billboard sign would be located. If, for example, they wanted to put the billboard out in front of a 25 foot tall office building, and the residential lots were 175 foot away behind that office building, and you could stand in that yard and not see that billboard sign then it could be reduced to 150 feet. If they want to go below those distances they will have to go through the Conditional Use type process with the hearings, and that type of thing.

GAROFALO Was there agreement with the industry people on that?

SCHROEDER I will let them speak to that. I think we have gone through about three to four little drafts of that even since we have been through the City Council workshop, and we were talking today that we are generally in concurrence with this.

GAROFALO Was there some disagreement about how that was measured?

SCHROEDER There was, and that was the key, if it is to the lot line, or to the structure that is really where the discussion was. I think their concern was what if it is on the "big ditch," that is zoned "SF-5"? What we have done is said this has to be a platted subdivision lot that you could actually erect a house on.

HENTZEN We just addressed a large down zoning but how is your new record going to affect that in that area? In other words, someone gets a little business and asks for LC zoning; he gets it and the rest of the neighborhood is residential zoned. What are we going to do?

SCHROEDER Under these regulations it will be much more difficult to get that done, and you will have to go through a hearing process to get it done, assuming it is within 300 foot of a residential lot.

GREG FERRIS, FERRIS CONSULTING, Box 573, Wichita, KS 67201 I represent Gemini Outdoor Advertising and Bresslor/Kessler Outdoor Advertising. We have spent a lot of time with staff drafting these proposed amendments, and what you see before you is a true compromise. As a general rule what you see before you we are in agreement.

JOHN LAY, PRESIDENT GEORGE LAY SIGNS, 1016 N. Waco, Wichita, KS 67203 I have several billboard structures in town. The moratorium, when it came about, and the City Council even acknowledge that a lot of the concerns were focused around newer structures which had been built, one near Webb and 21st and others around 21st and Ridge Road, and those concerns were around those areas.

The first draft we saw of the Sign Code amendments would largely put us out of business in 10 years time. So we got very concerned about what that was going to do and to keep us in business with those that said don't build the billboards near my neighborhood. That draft had also provided that every billboard structure would come before MAPC and be approved, instead it now goes to a different Board and on a limited number of cases.

Under current Code, I think, there were some people that said find a piece of commercial property and you can put a billboard up which is simply not true. I would tell people under the current Code your changes were slim and none, and with these new restrictions the slim goes to a whole lot extremely skinny from slim. I would encourage the support of these amendments subject to a few minor changes we are still working on.

DAVID MOLLHAGEN, CLEAR CHANNEL OUTDOOR ADVERTISING, 3405 N. Hydraulic, Wichita, KS 67219 We have all made a lot of concessions about what is and about what could be happening. I am a member of DAB II. Keeping the size down to 300 square foot and not so much on the highways were concerns. We want to get people off the road and into Wichita so we still need to see about having billboards along those. We still need to support businesses that are not in Wichita that cannot have the 21st Street address or Rock Road address. Sometimes we have a disagreement with the measurements, the measurements that were in the Code they represent the figures of 150 or 75 feet. The 150-foot was a measurement taken along the street, parallel with the street and the sign itself. The 75 feet was the sign itself to the back of the property to the residential use. What was proposed 300 and 150 feet, but the way it is written right now is it appears it is a 300-foot radius around the sign of which I have a problem with.

The great concession that was made was the CUP, and taking the measurement out that the CUP did not allow a billboard sign, because there are CUP's that do allow billboards. So if it was not allowed in the CUP that measurement was taken out. So with

these kinds of restrictions it cuts down dramatically what can be built. Kurt Schroeder was asked how many complaints has he had in the last 10 years, his response was only 2 that really generated any complaints in 10 years. We also asked how many signs had been built in those 10 years, and his response somewhere around 6-8 per year. So the industry has tried to work with the city and the neighborhoods.

BISHOP What is it about the CUP?

MOLLHAGEN The city has tried to put in no billboards or off site signs. Some developers know that along Kellogg or along large four-lane streets that they may want to at some point and time be able to put up a billboard sign out there to advertise businesses that are not on those major roads, pad sites but the pad sites are in behind. We could take the measurement, say 800 feet in that CUP along 13th Street add to this and come up to 1600 feet and put up one sign that did not have that CUP because we were able to use that measurement. Now with the way it is written now with this CUP, that does not allow billboards; we cannot use that 800 feet from it. We can only use the 800 feet that is off to the side that does not have any other billboard restrictions on it.

DUNLAP Kurt, the appeal process that you have described seems fuzzy to me. Is that a new sign board that we are establishing?

SCHROEDER No, it is this body. But the only time that it will come here is if it is too close to the residential.

DUNLAP Are we going to do any amortization or are all existing signs going to stay where they are?

SCHROEDER Highly discussed, but there will be no amortization meaning that if a sign became non-conforming by these new regulations then it would have to be gone say in 5-10 years that is gone it is not in this proposal.

DUNLAP Is maintenance allowed then?

SCHROEDER Yes.

MOTION: To Approve the Sign Code ordinance amendments in accordance with staff recommendations.

BISHOP moved, **GAROFALO** seconded the motion, and it carried (11-0).

❖ **SUBDIVISION ITEMS**
6. Consideration of Subdivision Committee recommendations

6-1. **SUB2004-120 – Revised One-Step Final Plat – CAREY ACRES ADDITION, located on the northeast corner of 93rd Street North and Hydraulic.**

NOTE: This site is located in the County in an area designated as “rural” by the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan.

This revised plat has adjusted the boundaries of the Floodway Reserve and includes revised access controls.

STAFF COMMENTS:

- A. Since sanitary sewer is unavailable to serve this property, the applicant shall contact **County Code Enforcement** to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval.
- B. The site is currently located within the Sedgwick County Rural Water District No. 2. If service is available, feasible and the property is eligible for service, **County Code Enforcement** recommends connection.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. **A drainage plan and a flood study need to be provided to County Engineering. Additional easements may be needed based on the flood study. Applicant shall contact DWR concerning permits and certification for dam.**
- E. **County Engineering** requests the Applicant demonstrate access to the buildable area of Lot 4. **A site plan for Lot 4 is requested.**
- F. **County Engineering** requests submission of a restrictive covenant limiting development to the portion of Lot 1 west of the floodway reserve and to the portion of Lot 4 south of the floodway reserve.
- G. **County Engineering** needs to comment on the access controls. The plat denotes a joint access between Lots 1 and 2, and a joint access between Lots 3 and 4. **The access controls are approved.**
- H. Per **Sedgwick County Fire Department**, access drives to any structure in excess of 150 feet from the edge of the roadway will need to be installed prior to final framing inspection, preferably before the start of any above grade construction work. Such drive to be installed according to fire department specifications: (1) Twenty feet of drivable surface is provided the entire length of the access drive designed to withstand the weight of fire apparatus in inclement weather with provisions for turning fire apparatus around. (2) To meet fire department specifications, the surface will need to be an all-weather material

consisting of rock or gravel, ground asphalt, laid asphalt or concrete. It is to be applied a minimum of 4 inches in depth consistently over the entire width and length of the driving surface (gravel is prone to problems during extended periods of rain or snow and should be used with caution unless a good solid compacted base has been installed).

- I. The Applicant is advised of the need to revise the CUP in accordance with the plat.
- J. In accordance with Access Management regulations, a major street intersection is needed along with an additional 25-ft x 25-ft corner clip at the intersection corner.
- K. Lot 4 does not conform with the 200-ft lot width standard which is measured at the building setback line. An increase in the distance of the building setback from the road would meet the standard.
- L. "Lots, a block and streets" shall be referenced in the plat's text.
- M. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- N. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- O. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- P. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- Q. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- R. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- S. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- T. Perimeter closure computations shall be submitted with the final plat tracing.
- U. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- V. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. SBC has requested additional easements.
- W. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, **GAROFALO** seconded the motion, and it carried (11-0).

6-2. **SUB2003-37 – Final Plat – STOCKYARD INDUSTRIAL PARK ADDITION, located on the north side of 21st Street North and east of Broadway.**

NOTE: This is an unplatted site located within the City. The site was approved in 1997 for a Conditional Use (CU-431) for an Auto Salvage Yard.

STAFF COMMENTS:

- A. City Environmental Health Department has advised that this site is located in the North Industrial Corridor which may require access to the property for continued pollution site monitoring. The owner shall permit access to the property for any environmental study.

- B. The applicant shall guarantee the extension of sanitary sewer to serve the lots being platted. Fees in lieu of assessment regarding sewer main connections are required.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. **A cross-lot drainage agreement is needed. A minimum pad elevation table should be shown on the face of plat.**
- E. **MAPC approved the existing westernmost access opening on Lot 2. A cross-lot access easement is needed for the benefit of Lot 3. The existing opening located approximately 80 feet from the east property line is approved for right turns in/out only. The easternmost opening on the property shall be closed.**

Proposed access controls conform with the above request.

- F. The applicant shall guarantee the closure of any driveway openings located in areas of complete access control or that exceed the number of allowed openings.
- G. The Applicant shall meet with Deputy County Surveyor to discuss depiction of plat boundary.
- H. A cross-lot circulation agreement is needed to assure internal vehicular movement between the lots.
- I. **MAPC has approved a 30-ft contingent dedication of right-of-way along the frontage of the property with the exception of the existing structure to the west.**

This contingent dedication has been denoted on the final plat.

- J. **City Engineering** requests a dedication of 35 feet of half-street right-of-way along 25th Street North.

This dedication has been denoted on the final plat.

- K. The call at the southwest corner of plat needs to be changed from "SE Cor." to SW Cor."
- L. The sewer easement needs to be shown with sufficient location ties.
- M. The applicant shall guarantee the future paving of the south half of 25th Street North.
- N. The applicant shall submit a copy of the instrument which establishes the pipeline easements on the property, which verifies that the easements shown are sufficient and that utilities may be located adjacent to and within the easements. Any relocation, lowering or encasement of the pipeline, required by this development, will not be at the expense of the City.
- O. The applicant's agent shall determine any setback requirements for the pipelines by researching the text of the pipeline agreements. If a setback from the pipeline easements is provided for in the pipeline easement agreements, it shall be indicated on the face of the plat.
- P. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- Q. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- R. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- S. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- T. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- U. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- V. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.

- W. Perimeter closure computations shall be submitted with the final plat tracing.
- X. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Y. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Z. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: To defer Item 6-2.

WARNER moved, **JOHNSON** seconded the motion, and it carried (11-0).

6-3. SUB2004-102– Final Plat – PENNSWOOD PARK ADDITION, located east of 167th Street and on the north side of Central.

NOTE: This is unplatted property located in the County within three miles of the City of Wichita. It is in an area designated as "2030 Urban Service Area" by the Wichita-Sedgwick County Comprehensive Plan. It is located in the Goddard Area of Influence.

Since this plat is located in an area where public services are planned to be available for higher density development, "lot bundling" has been provided so the eight building sites (Tracts A through H) may be readily converted to urban-scale lots without replatting.

STAFF COMMENTS:

- A. Since sanitary sewer is unavailable to serve this property, the applicant shall contact County Code Enforcement to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval. **A memorandum shall be obtained specifying approval of the proposed individual alternative sewer system from County Code Enforcement along with a maintenance agreement.**
- B. City Water and Sewer Department requests a petition for future extension of sanitary sewer and City water services.
- C. The site is currently located within the Sedgwick County Rural Water District No. 4. If service is available, feasible and the property is eligible for service, County Code Enforcement recommends connection.
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- E. County Engineering needs to comment on the status of the applicant's drainage plan. **A drainage plan has been provided. A 4-corner lot grading plan is needed. Additional drainage easements may be needed based on the drainage plan.**
- F. The applicant shall guarantee the closure of any driveway openings located in areas of complete access control or that exceed the number of allowed openings.
- G. County Engineering requests an off-site contingent dedication of 162nd St. West and Pine.
- H. In accordance with Access Management Regulations, complete access control is required for arterials intersecting with local streets. Complete access control of 75 feet is needed along Pennswood from Central.
The requested access control has been platted.
- I. Per Sedgwick County Fire Department, access drives to any structure in excess of 150 feet from the edge of the roadway will need to be installed prior to final framing inspection, preferably before the start of any above grade construction work. Such drive to be installed according to fire department specifications: (1) Twenty feet of drivable surface is provided the entire length of the access drive designed to withstand the weight of fire apparatus in inclement weather with provisions for turning fire apparatus around. (2) To meet fire department specifications, the surface will need to be an all-weather material consisting of rock or gravel, ground asphalt, laid asphalt or concrete. It is to be applied a minimum of 4 inches in depth consistently over the entire width and length of the driving surface (gravel is prone to problems during extended periods of rain or snow and should be used with caution unless a good solid compacted base has been installed).
- J. The applicant shall guarantee the installation of the proposed street to the 36' rock standard.

- K. The Applicant shall submit a restrictive covenant tying the lots together within each tract. Each building site shall be limited to one dwelling unit until the property is annexed by the City of Wichita and municipal water and sanitary sewer services become available. The covenant shall also restrict the location of structures on this plat to avoid interference with the possible future streets, easements and setbacks.
- L. In accordance with the KS Wetland Mapping Conventions under the Memorandum of Understanding between the USDA-NRCS; USEPA; USACE; and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed."
- M. The applicant is reminded that this site is located within three miles of the City Limits of Wichita and will be heard by City Council. Therefore, the City Council signature block needs to be included on the final plat.
- N. The Applicant has platted 25-ft building setbacks which represents an adjustment of the Zoning Code standard of 30 feet for the RR, Rural Residential District. The Subdivision Regulations permit the setback provisions to be modified by the plat upon the approval of the Planning Commission. **The setback modification has been approved.**
- O. Approval of this plat will require a waiver of the lot depth to width ratio of the Subdivision Regulations for Lots 1 and 2, Block A. The Subdivision Regulations state that the maximum depth of all residential lots shall not exceed 2.5 times the width. **The modification has been approved.**
- P. **GIS** needs to comment on the plat's street names. **The street names are approved.**
- Q. The MAPC signature block needs to reference "Morris K. Dunlap, Chair".
- R. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- S. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- T. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- U. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- V. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- W. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- X. Perimeter closure computations shall be submitted with the final plat tracing.
- Y. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- Z. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- AA. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, **GAROFALO** seconded the motion, and it carried (11-0).

6-4. **SUB2004-114– One-Step Final Plat – OAK CREEK ADDITION, located on the southwest corner of 21st Street North and Greenwich Road.**

NOTE: This site is located in the County adjoining Wichita's city limits and annexation is required. The site has been approved for a zone change (ZON 2003-42) from SF-20, Single-Family Residential to LC, Limited Commercial and GO, General Office. The Oak Creek Community Unit Plan (CUP 2003-43, DP-274) was also approved for this site. The site is located within

the 100-year floodplain.

STAFF COMMENTS:

- A. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted. City Engineering needs to comment on the need for other guarantees or easements.
- B. Prior to this plat being forwarded to the City Council, the applicant shall apply for annexation to Wichita.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. A guarantee is required.
- E. Traffic Engineering needs to comment on the need for any improvements to perimeter streets. In accordance with the CUP, the applicant shall provide a guarantee for a continuous accel/decel lane on 21st St. North. Traffic Engineering also has requested the applicant guarantee a proportionate share of the cost of a future traffic signal at 19th and Greenwich.
- F. Traffic Engineering needs to comment on the access controls. In accordance with the CUP approval, the plat proposes five openings along 21st St. North with three openings limited to right turns only. The plat proposes six openings along Greenwich with two openings limited to right turns only. Regarding the access controls proposed for Lot 1, Block 1 along 21st North, the plat should include a note that the access controls shall be in accordance with City of Wichita access management standards.
- G. In accordance with the CUP approval, a cross-lot circulation agreement is needed to assure internal vehicular movement between the lots.
- H. In lieu of increasing the width of 19th Street North and Regency Lakes, a restrictive covenant will be provided restricting the streets to "No Parking".
- I. The Applicant shall guarantee the paving of the proposed streets.
- J. In accordance with the KS Wetland Mapping Conventions under the Memorandum of Understanding between the USDA-NRCS; USEPA; USACE; and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed."
- K. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- L. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- M. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- N. GIS needs to comment on the plat's street names. The street names Regency Lakes will be revised.
- O. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- P. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- Q. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- R. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- S. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- T. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of

Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.

- U. Perimeter closure computations shall be submitted with the final plat tracing.
- V. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- W. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- X. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, **GAROFALO** seconded the motion, and it carried (11-0).

6-5. **SUB2004-122– One-Step Final Plat – DOROTHY ADDITION, located south of 31st Street South and on the east side of West Street.**

NOTE: The site has been approved for a zone change (ZON 2002-03) from SF-5, Single-Family Residential to LC, Limited Commercial (Lot 1) and GO, General Office (Lot 2). The Dorothy Community Unit Plan (CUP 2002-02, DP-258) was also approved for this site.

STAFF COMMENTS:

- A. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted. **Fees in lieu of assessment regarding main connections are required. An off-site sewer easement is needed.**
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **Minimum pads need to be platted.**
- D. In accordance with the CUP, the following transportation improvements are required:
 - 1. The applicant shall guarantee: construction of a decel lane from West Street to the first entrance on Calvert, reconfiguration of the intersection geometry for Calvert at West Street to reduce the turning radius to 90° and allow a center left-turn lane from Calvert to West, paving of the unpaved segment of Calvert, and widening of Calvert to 36-foot back-to-back on Calvert from the first drive entrance to the second drive entrance.
 - 2. A guarantee for traffic signalization at West shall be provided, but this signal shall not be permitted unless warranted by traffic volumes and coordinated with the I-235/West interchange ramp.
- E. The segment of Calvert located east of the All Hallows intersection is not open and should be vacated. The Applicant should contact the School district to attempt to have this right-of-way vacated.
- F. Access controls have been platted in accordance with the CUP approval. The plat proposes two access openings along Calvert. Distances should be shown for all segments of access control. The final plat shall reference the dedication of access controls in the platlor's text in accordance with the face of the plat. Complete access control needs to be shown along I-235. **Traffic Engineering has approved the relocation of the westernmost access opening to a mid-block location between Illinios and McComas.**
- G. The platlor's text shall include reference to "reserves" in the owner's certificate.
- H. In accordance with the KS Wetland Mapping Conventions under the Memorandum of Understanding between the USDA-NRCS; USEPA; USACE; and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed."
- I. The platlor's text on the final plat shall reference the bicycle path easement as being dedicated to the public and state that fences, barriers or other man-made obstructions are not permitted within the easement. **The plat will be revised to indicate a dedication of contingent street right-of-way for the bike path. The platlor's text should be revised accordingly.**
- J. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- K. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s)

fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.

- L. A note shall be placed on the final plat, indicating that this Addition is subject to the conditions of the Dorothy Community Unit Plan (CUP 2002-02, DP-258).
- M. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- N. The City Council certification needs to be revised to reference Carlos Mayans, Mayor.
- O. The signature line for the City Clerk needs to be revised to reference "Karen Sublett".
- P. The MAPC signature block needs to reference "Morris K. Dunlap, Chair".
- Q. In accordance with the CUP approval, a cross-lot circulation agreement is needed to assure internal vehicular movement between the lots.
- R. A CUP Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved CUP and its special conditions for development on this property.
- S. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- T. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- U. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- V. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- W. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- X. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Y. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- Z. Perimeter closure computations shall be submitted with the final plat tracing.
- AA. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- BB. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. Westar Energy has requested additional easements.
- CC. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, **GAROFALO** seconded the motion, and it carried (11-0).

6-6. **DED2004-22 – Dedication of Access Control, for property located west of Webb Road and on the north side of Harry.**

DED 2004-22: Dedication of Access Control from Raymond E. and Shelly E. Lowen, for property located west of Webb Road, on the north side of Harry.

LEGAL DESCRIPTION:

The east 200 feet of the south 220 feet of Lot 2, Block 2, Park Meadow Estates, Wichita, Sedgwick County, Kansas.

PURPOSE OF DEDICATION: This dedication is associated with a lot split case (SUB 2004-112) for complete access control along Harry and Todd Streets.

AGENT/SURVEYOR: Mark Savoy, Savoy Company, P.A., 525 S. Emporia, Ste. 104, Wichita, KS 67202

STAFF RECOMMENDATION: Accept the Dedication.

MOTION: Approve, subject to staff recommendations

MCKAY moved, **GAROFALO** seconded the motion, and it carried (11-0).

PUBLIC HEARING — VACATION ITEMS

7-1. VAC2004-44 – Request to Vacate a Portion of a Platted Front Setback.

OWNER/APPLICANT: Restoration & Waterproofing c/o Todd Chapman

AGENT: Dale Hermes

LEGAL DESCRIPTION: Vacate 5-feet of the platted 35-foot setback that runs parallel to the Hoover Road ROW on the west side of Lot 1, the Snodgrass Addition, as recorded, Wichita, Sedgwick County, Kansas.

LOCATION: Generally located midway between Harry Street and Pawnee Boulevard on the east side of Hoover Road.

REASON FOR REQUEST: Expansion of building and remove existing encroachment

CURRENT ZONING: Subject property and southern, northern and western abutting and adjacent properties are zoned "LI" Limited Industrial. The Wichita- Valley Center Floodway abuts the east side of the subject site and is not zoned.

The applicant is requesting vacation of 5-feet of the platted 35-foot setback, as described, on Lot 1, the Snodgrass Addition. The setbacks run parallel to the Hoover Street ROWs. The Unified Zoning Code's (UZC's) standard for a front yard setback for the "LI" zoning district is 20-feet. The applicant proposes expansion of the existing building. The Snodgrass Addition was recorded September 11, 1973.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives, and other interested parties Planning Staff recommends approval to vacate the platted 35-foot setback as described in a legal description, with conditions:

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

- 1) That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time September 16, 2004 which was at least 20 days prior to this public hearing.
- 2) That no private rights will be injured or endangered by the vacation of the above-described portion of the platted setbacks and the public will suffer no loss or inconvenience thereby.
- 3) In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of a portion of the platted setback described in the petition should be approved with conditions:

1. Vacate the platted 35-foot setback and replace it with the UZC's setback for the "LI" Limited Industrial zoning district; 20-feet.
2. Per the Traffic Engineer's recommendation, contingent dedication of 10-foot of ROW, per the Subdivision Regulations for arterials and section line roads, Article 7, Part 2, 7-201, item H, page 7-14.
3. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
4. All improvements shall be according to City Standards.

5. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate the platted 35-foot setback and replace it with the UZC's setback for the "LI" Limited Industrial zoning district of 20-feet.
- (2) Per the Traffic Engineer's recommendation, contingent dedication of 10-foot of ROW, per the Subdivision Regulations for arterials and section line roads, Article 7, Part 2, 7-201, item H, page 7-14.
- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- (4) All improvements shall be according to City Standards.
- (5) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, **GAROFALO** seconded the motion, and it carried (11-0).

7-2. VAC2004-45- Request to Vacate a Platted Front and Street Side Setbacks, and Contingent Street Dedication.

| | |
|-----------------------------------|---|
| <u>OWNER/APPLICANT:</u> | Wichita Independent Business Association |
| <u>AGENT:</u> | Baughman Company PA c/o Terry Smythe |
| <u>LEGAL DESCRIPTION:</u> | The platted 35-foot setback that runs parallel to the Central Avenue and Waco Avenue ROWs on a northern portion and an eastern portion of Lot 2, the Emerson Addition as recorded, Wichita, Sedgwick County, Kansas (see attached legal descriptions) |
| <u>LOCATION:</u> | Generally located on the southwest corner of the Central Avenue and Waco Street Intersection. |
| <u>REASON FOR REQUEST:</u> | Building site |
| <u>CURRENT ZONING:</u> | The east portion of the subject property is zoned "GC" General Commercial and the western portion is zoned "B" Multi-family Residential. Property south of the site is "GC" and "B". Properties west and north (across Central Avenue) of the site are zoned "B". Property east of the site (across Waco Avenue) is zoned "GC". |

The applicant is requesting vacation of the platted 35-foot setback, as described, on a portion of Lot 2, the Emerson Addition. The applicant is also requesting vacation of a contingent dedication of Street Row along the northeast portion of the site. The Unified Zoning Code's (UZC's) standard for a front yard setback for the "GC" zoning district is 20-feet, with no minimum street side setback. The UZC's standard for a front yard setback for the "B" zoning district is 20-feet, with a minimum 5-foot street side setback. The applicant has filed for a Lot Split (SUB2004-84), which divides Lot 2 into Parcels A & B. Parcel A (1.1-acres) is the subject site. Per Art III, Sec. III-E, #6 of the UZC, the front setback on a corner lot is located along the shorter street frontage, which in this case would be the Central Avenue frontage, with the street side setback being along the Waco Avenue frontage. Per the Emerson Addition plat's text, the contingent dedication was for public street ROW, to be used when the City needed it. The Emerson Addition was recorded May 5, 1980.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives, and other interested parties Planning Staff recommends approval to vacate the 35-foot platted setbacks as described in a legal description and the contingent street ROW dedication with conditions:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time September 16, 2004 which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted setbacks and the public will suffer no loss or inconvenience thereby.

3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of a portion of the platted setbacks described in the petition should be approved with conditions;

1. Vacate the platted 35-foot platted setbacks, per the legal description, along the north and east sides of Lot 2, the Emerson Addition. Replace with the UZC's minimum front yard setback for the "GC" & "B" (both are 20-foot) zoning district along the subject property's Central Avenue frontage and with the UZC's minimum street side setback (no minimum) along the subject property's Waco Avenue frontage.
2. Vacate the contingent dedication for public street ROW, per the legal description.
3. After the approval of the vacation by the Wichita City Council, complete and record the Lot Split of Lot 2, the Emerson Addition.
4. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
5. All improvements shall be according to City Standards.
6. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. Vacate the platted 35-foot platted setbacks, per the legal description, along the north and east sides of Lot 2, the Emerson Addition. Replace with the UZC's minimum front yard setback for the "GC" & "B" (both are 20-foot) zoning district along the subject property's Central Avenue frontage and with the UZC's minimum street side setback (no minimum) along the subject property's Waco Avenue frontage.
2. Vacate the contingent dedication for public street ROW, per the legal description.
3. After the approval of the vacation by the Wichita City Council, complete and record the Lot Split of Lot 2, the Emerson Addition.
4. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
5. All improvements shall be according to City Standards.
6. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

MOTION: Approve, subject to staff recommendations

MCKAY moved, **WARNER** seconded the motion, and it carried (9-0-2). **JOHNSON AND DUNLAP** ABSTAIN.

7-3. VAC2004-46 – Request to Vacate a Floodway Easement.

OWNER/APPLICANT: Wal-Mart Stores Inc. West Bay Properties c/o Tim Tucker

AGENT: KE Miller Engineering, PA c/o Kirke Miller

LEGAL DESCRIPTION: The platted 10-foot waterline easement on Lot 6, Block A, Replat of Part of the Kinkaid Park Addition, Wichita, Sedgwick County, Kansas. (see attached legal)

LOCATION: Generally located midway between Pawnee Avenue and the Arkansas River on the east side of Broadway Avenue.

REASON FOR REQUEST: Redevelopment of site & relocation of waterline.

CURRENT ZONING: Subject property and abutting and adjacent properties are zoned "GC" General Commercial.

The applicant is requesting consideration for the vacation of a 0.43-acre platted floodway easement located in the north side of Lot 3, Block 1, Waterfront Addition. Per the plat's text, restrictions within the floodway include "no structure shall be constructed on or within the said floodway, nor shall any fill, change of grade, creation of a channel or any other work on be carried out without the permission of the City Engineer." The floodway easement abuts Reserve "C" and a larger floodway easement and is also adjacent to Reserve "B" all in the Waterfront Addition. Per the plat's text the uses allowed in Reserves "C" & "B" include drainage and floodway. There are no sewer or water lines in the floodway reserve. The applicant proposes to use the vacated floodway for additional area for a building site on Lot 3, Block 1, Waterfront Addition. The Waterfront Addition was recorded with the Register of Deeds January 24, 2003.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the floodway easement and amend the plat text to allow additional use of a building site as described in the legal description with the following conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time September 16, 2004, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described floodway reserve and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the floodway reserve described in the petition should be approved with conditions;
1. Vacate only that portion of the platted floodway easement as approved by City Public Works/Strom Water. Provide Staff, if needed, with plans for review and approval by City Public Works/Strom Water. All to be provided prior to the vacation case proceeding to WCC.
 2. Amend the plat text to allow the use of a building site on that portion of the approved vacated portion of the floodway easement.
 3. Provide public and franchised utilities with any required easements dedicated by separate instrument made necessary by the proposed vacation. All to be provided prior to the vacation case proceeding to WCC.
 4. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
 5. All improvements shall be according to City Standards.
 6. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate only that portion of the platted floodway easement as approved by City Public Works/Strom Water. Provide Staff, if needed, with plans for review and approval by City Public Works/Strom Water. All to be provided prior to the vacation case proceeding to WCC.
- (2) Amend the plat text to allow the use of a building site on that portion of the approved vacated portion of the floodway easement.
- (3) Provide public and franchised utilities with any required easements dedicated by separate instrument made necessary by the proposed vacation. All to be provided prior to the vacation case proceeding to WCC.
- (4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- (5) All improvements shall be according to City Standards.
- (6) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, **GAROFALO** seconded the motion, and it carried (11-0).

❖ **PUBLIC HEARING — ZONING ITEMS**

8. **Case No.: CUP2004-34 DP106-#1** – Super Market Developers, owner-applicant (Peter Bohling, agent); Wesley Medical Center, Lessee-applicant (Sam Serrill, agent); Tegra Health Care Properties, purchaser-applicant (Matt Jensen, agent) Request Amendment to The Northwest Village Community Unit Plan on property described as;

Those parts of Lots 1 and 4, Block 1, in Northwest Village to Wichita, Sedgwick County, Kansas, more particularly described as follows:

Beginning at the Northwest corner of said Lot 4, where found a 3/4" iron pipe; thence South 88 degrees 01'53" East along the North line of said Lot 4, a distance of 540.04 feet where found a 1/2" iron pipe; thence South 1 degrees 57'59" West 82.00 feet, where found a 1/2" iron pipe; thence North 88 degrees 02'01" West 50.00 feet where found a 1/2" iron pipe; thence South 01 degrees 57'59" West 282.00 feet where found a 1/2" iron pipe; thence South 88 degrees 02'01" East 87.00 feet where found a 1/2" iron pipe; thence South 1 degrees 57'59" West 275.12 feet to the South line of said Lot 4 where found a 1/2" iron pipe; thence North 88 degrees 02'01" West along the South line of said Lot 4, a distance of 265.58 feet to a point where set a 1/2" iron pipe; thence North 79 degrees 43'40" West, along the Southerly line of said Lot 4, a distance of 35.39 feet to the Southeast corner of said Lot 1 where found a 3/4" iron pipe; thence North 79 degrees 31'21" West along the Southerly line of said Lot 1, a distance of 65.73 feet to a point where found a 1/2" iron pipe; thence North 88 degrees 00'58" West along the South line of said Lot 1, a distance of 40.50 feet where set a 1/2" iron pipe; thence North 1 degrees 58'12" East along a line parallel with and 105.50 feet West of the East line of said Lot 1, a distance of 214.97 feet to the North line of said Lot 1 where found a 1/2" iron pipe; thence North 88 degrees 00'34" West along the North line of said Lot 1 a distance of 147.97 feet to the Northwest corner of said Lot 1 where set a chiseled "V"; thence North 8 degrees 32'46" West along the Westerly line of said Lot 4, a distance of 60.33 feet to a point where set a chiseled "V"; thence North 0 degrees 00'55" East, along the West line of said Lot 4, a distance of 350 feet to the point of beginning. TOGETHER WITH Easements created under: Reciprocal Easement Agreement recorded in Film 663, page 1134 and assigned in Film 1152, page 1524 and Assignment and Assumption of Reciprocal Easement Agreement recorded in Film 2433, page 1733. Agreement recorded in Film 663, page 839; Joint Access Agreement recorded in Film 598, page 995. Generally located on the northeast corner of 13th Street North and Tyler Road.

DEFERRED SEPTEMBER 9, 2004

BACKGROUND: The Northwest Village Community Unit Plan (CUP) is located at the northeast corner of Tyler Road and 13th Street North, and is divided into five development parcels, with each parcel containing specific development standards. The application area is located in Parcel 4, and has a base zoning of LC, Limited Commercial, subject to the CUP development restrictions. Super Market Developers own the western 6.8 acres of the 16.75-acre Parcel 4, and are seeking an amendment to allow "emergency medical and diagnostic services, and education services" to occur on the applicants' portion of Parcel 4. If the request is approved, Tegra Healthcare Properties intends to purchase the site and lease some or all-of-the site to Wesley Health Care who intends to provide medical services, including emergency medical services (EMS).

The applicants' portion of Parcel 4 is developed with a commercial building containing approximately 66,000 square feet that was, until two to three years ago, a grocery store. The building is now vacant and has been since the grocery store closed.

This facility would provide emergency services for minor injuries up to and including low-level trauma events. 10,000 square feet of the building's 66,000 square feet would be committed to the EMS service. The EMS facility would be open seven days a week, 24-hours a day. Wesley estimates there would be an average of one to two emergency runs a day. Another 5,000 feet would be dedicated to diagnostic services, including laboratory work, and diagnostic imaging capabilities such as CT, x-ray, mammography and ultrasound. The remaining 51,000 square feet would be used for medical offices; educational services and other permitted uses (see Tegra Healthcare letter of August 3, 2004, attached.) The entrance to the EMS room would be from the west side of the building. The applicant anticipates 190 to 290 weekly patient visits for all medial uses.

Access to the site is via both Tyler and 13th streets.

The eastern portion of Parcel 4 is owned by another entity, Northwest Centre, L.L.C., and is developed with 79,550 square feet of retail and office uses. The other four parcels within the CUP are developed with a bank, additional retail, office and service uses and residences.

Currently, Parcel 4 permits: shopping center; tire battery and accessory; financial, office, personal service convenience and service oriented retail uses.

Land to the north is part of the CUP and developed with residences; to the south is Northwest High School; and to the west are commercial and residential uses.

A masonry wall exists along the northern boundary of Parcel 4 that separates the commercial uses from the residential uses, located to the north. There is also a mature hedgerow of trees located north of the wall. City Fire Station 16 is located approximately 932 feet north of the application area (16th Street and Tyler), and responds to an average of 139 emergency calls a month with siren and lights.

The applicants held a neighborhood meeting with area residents on August 26, 2004.

CASE HISTORY: Both the Northwest Village Community Unit Plan and its associated zoning, and the Northwest Village plat were approved and recorded in 1980. The application area is part of Lot 4, Northwest Village Addition. On August 3, 2004, the applicants sought an administrative interpretation from the Superintendent of Central Inspection to allow the proposed use by-right under the permitted uses section of the existing CUP (see attached letter from Tegra Healthcare Properties). However, on August 15, 2004, the Superintendent determined that the emergency medical service use is not permitted by-right, and required an amendment to the CUP (see attached letter dated August 15, 2004). Northwest Centre, L.L.C. and a citizen residing in one of the homes located north of the site submitted letters of opposition dated August 11, 2004, and August 10, 2004 (see attached letters from Gary Oborny and Amy James).

The opposition cite incompatibility of uses; increased traffic congestion; emergency vehicle traffic will generate additional light and noise; patrons of the EMS room can be security risks for the neighborhood; negative impact on the shopping experience; lack of commitment by Wesley to provide security for the EMS facility. They also estimate that the number of runs is more likely to be seven to eight trips per day.

ADJACENT ZONING AND LAND USE:

NORTH: MF-29, Multi-family Residential; duplex residences
SOUTH: SF-5, Single-family Residential; high school
EAST: LC, Limited Commercial; retail, office and service commercial
WEST: LC, Limited Commercial and MF-18 Multi-family Residential; retail commercial and residences.

PUBLIC SERVICES: All normal public services are available. Tyler and 13th streets are paved four-lane arterials with right and left turn lanes at the intersections. Average daily traffic through the Tyler and 13th streets intersection ranges from 15,830 to 22,517 vehicles.

CONFORMANCE TO PLANS/POLICIES: The Wichita Land Use Guide map depicts this site as appropriate for commercial uses. The City's comprehensive land use plan contains location guidelines for commercial and office uses. In general these guidelines recommend that such uses should: be located adjacent to arterial streets; employ site design features that limit noise and lighting; be located in planned centers; and that local, service-oriented offices be incorporated within or adjacent to neighborhood and community scale, commercial developments. The Plan also contains a public safety goal of providing residents with the highest quality and most efficient public safety services available, and a public safety objective of providing responsive public safety services to meet the needs of existing residents and future new growth.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following condition: "Emergency medical and diagnostic services, and education services" are permitted uses in Parcel 4."

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: There is a mix of zoning and uses in the general area. Properties are zoned SF-5 Single-family Residential, MF-29 Multi-family Residential and LC Limited Commercial. Uses range from low-density residential, a high school and retail commercial uses. The application area is adjacent to a multi-lane arterial intersection carrying over 22,000 average daily trips. The residential uses to the north are buffered from the proposed use by a masonry wall and a mature hedgerow. Further to the north, less than 1,000 feet, there is a city fire station that responds to over 130 emergency calls in a typical month.
2. The suitability of the subject property for the uses to which it has been restricted: Potentially the site could be utilized as developed and zoned, however the existing structure has been vacant for two to three years indicating that there is something amiss with the existing development restrictions, the existing building or possibly the return expected from the rent or sale of the property.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request will not introduce any elements to the general neighborhood that are not already present except possibly a facility that is open 24 hours a day. The fire station already runs with lights and sirens in the area, and the masonry wall and hedgerow provide a buffer to the north. The entrance to the facility is to be from the west side so that the rest of the building acts as a buffer for the retail uses located to the east.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial of the request could cause an economic hardship for the current property owner since he would lose out on this particular business opportunity. The community could also lose out in that there are not any hospital related EMS rooms in west Wichita. No one would argue that it is not in the community's interest to improve response times for emergency medical services.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: Improving the delivery emergency medical services is consistent with comprehensive plan goals and objectives. This site is a retail center that is located consistent with guidelines contained in adopted plans.
6. Impact of the proposed development on community facilities: No negative impacts are identified.

DALE MILLER, Planning staff presented the staff report and summarized all materials handed out to the Planning Commission today.

DOWNING What was this building used for before, and did it have 24-hour operations?

MILLER My understanding is that this was an old Albertson's grocery store, and I don't know if it was 24 hours or not. (Audience members indicate that it did have 24 hour per day operations for a least part of the time.)

DUNLAP Before we proceed several MAPC Commissioners have been approached outside of this commission hearing, and I would like you to identify yourself and state if that has affected your thinking or decision you will make today.

GAROFALO I was contacted and the discussion would have no bearing on what my final decision is today.

MITCHELL I was contacted and the discussion would have no bearing on what my final decision is today.

SHERMAN I was contacted and the discussion would have no bearing on what my final decision is today.

WARNER I was contacted and the discussion would have no bearing on what my final decision is today.

BISHOP I was left a voice mail and that message will have no bearing on what my final decision is today.

SAM SERRILL, Chief Operating Officer, Wesley Medical Center We are looking at a multi-use operation on the west side of our community. Because of the major population growth there we feel medical services are in need. Particularly since the Riverside Hospital Emergency Department closed this past August 23rd. We are looking at a one-stop shop for convenience for medical services including, physician offices, diagnostic services, as well as a 24-7 emergency department.

There are four major components of our project. An emergency department that will occupy a portion of the building, and we will have the capacity to treat 10 emergency service patients at one time in the facility. We are looking at a facility that will service adults and children.

This is not a trauma center. We will only be caring for those people who are to be appropriately cared for in this facility. Patients who have major traumatic injuries, such as a multi-vehicle accident or gun shot wounds or others, will have to go to designated trauma centers in our community. We will, of course, address everyone who comes into our facility regardless of how they get to us, and evaluate, treat or transfer them to an appropriate hospital.

There will also be imaging services, servicing not only the emergency service component, but also our doctors' offices, and we will be servicing anybody that walks in that requires diagnostic services of that nature.

This is a vacated supermarket. It is about 51,000 square feet. Our site selection process was quite detailed. Obviously for a facility of this nature, multiple use, medical office and related services, we want visibility, accessibility to get to this facility from other locations. That is why we want to be at a major intersection. We did look at about four different sites, and this is the only one that meets our criteria.

This has been vacant for about 2-3 years, and we have had an option on this property since October of last year, however it is still available and can be marketed. It is an eyesore in that neighborhood, as you have seen from some of the photos already, and we have a vacant parking lot. I know there has been some problem with trailer parking there and some vandalism in the area.

What we are finding across the country is that medical use is becoming more of a secondary use in shopping centers, in this nature. In terms of impact on the property nearby, we feel there can be substantial improvement in that we can increase the traffic in the area. We can generate over 400 visits per day to this area, plus we will be having employees who will be there 24-7. It will have less traffic count than a supermarket will have.

There have been concerns about safety and security that we want to address. It has been brought up about potentially undesirable patrons in the area, but we don't think this will be an issue, and based upon the neighborhood that we will be located in, obviously the crime is much less than it is in the center city.

There is already a masonry wall that separates the residential area from the commercial area, and we have talked at the community meetings that we are willing to do more with that wall if that is really necessary.

Currently, the uses that are currently in this shopping center, there are a number of non-retail tenants in addition to the retail tenants that are there right now. The first nine are medical in nature because over the past couple of years they have moved in. We hope that we can benefit all of these tenants. We think this is consistent with the land use guide and the comprehensive plan.

We have about \$9.5 million in development cost for this project along with \$3.2 million in medical equipment that would be servicing this. We have expended \$200,000 already in terms of development costs. This will shorten the EMS commute time and compliment the police and fire protection that is already in the western part of our community.

We met with the neighborhood on August 26th and there were over 125 people there, and we tried to address those concerns, and we will continue to do that whether it relates to security or the barrier between the residential area immediately to the north of us. We did meet with the District Advisory Board Monday, and did receive support from them.

GAROFALO The opposition is suggesting that you ought to use the property you have near the rehab hospital, could you elaborate why that is not appropriate?

SERRILL The hospital does own approximately 12 acres immediately east of the existing rehab hospital on 13th Street, and that was one of the sites that we did evaluate but it did not meet our criteria that I talked about earlier. In terms of the accessibility and visibility it will be bordered by residential areas, and there would possibly be similar concerns there. We would also like to be in an area that is visible, accessible, and is already known to the community.

DUNLAP Are you seeking any high level trauma here?

SERRILL No sir, there is very strict criteria regarding the types of patients that you can take care of. We are not a trauma center at this location because we don't have the capabilities. We will treat the people that will come to us.

DUNLAP So, you will not be receiving any air evacuations?

SERRILL No.

DUNLAP Will you be basing ambulances at this location?

SERRILL No, the ambulances will be provided by Sedgwick County EMS as they are now throughout the community.

DUNLAP There will not be any outbound siren activity here?

SERRILL Yes, somebody could come into us and could go out because they get another call. That is really within the pervue of the EMS system. I know there have been questions about siren noise coming in and out. I have spoken with EMS and they are conscience about siren noise. I can tell you at the hospital at our 550 Hillside location the sirens are turned off when they get into our neighborhood.

GAROFALO You have discussed this with EMS? Is EMS aware of what kind of patients they can bring to you; like someone who is having a heart attack?

SERRILL They have specific criteria of who they can bring to us.

GAROFALO The question is that there is a certain limit on what kind of patient you can handle there. Would EMS be aware of this that they would not transport someone that has been badly hurt in an accident for example? They would go to Wesley?

FRANCIE EKENGREN, CHIEF MEDICAL OFFICER AND MEDICAL DIRECTOR OF WESLEY EMERGENCY DEPARTMENT Yes, EMS is very aware of what the resources are in the city and how the facilities meet their triage criteria. So Via Christi St. Francis, and Wesley Medical Center can handle highest level trauma and no one else can. St. Joseph is in that same situation that we would be on the west side, those high levels do not go to that facility nor would they come to this new west side facility. On the other hand if you had a acute myocardial infarction, a heart attack, you could come to us and we could stabilize you and get you the appropriate care quicker and then transport you onto another site if needed.

GAROFALO That would be the same with someone with a stroke?

EKENGREN Yes, we would be able to treat that immediately and then transport on.

GAROFALO So you could have ambulances running out of your site with red lights and sirens going to another hospital?

EKENGREN Yes and no, what they typically do, once they stabilize they don't leave the facility red lights and sirens, but once they get into the traffic pattern they would probably have to pick that back up. They have very specific rules about when they run red lights and sirens because it is dangerous to not only their staff but, the patient in the truck, if they are stable they don't always run red lights and sirens.

JOHN S DECKER, 1831 N. JANSEN, WICHITA KS 67212 I attended the community meeting in August and found that it was probably 95-98% in favor of the facility. I speak in favor of it. I hear sirens quite often and I am grateful to have a center so close. I go to this center and see a doctor there and I am in favor of this proposal. An empty store is not attractive to look at either. I understand the concerns of the businesses, but they should be concerned about the health and welfare of the persons who would be their customers.

PETER BOHLING, ASSOCIATED WHOLESALE GROCERY, KANSAS CITY We own this facility and we are in support of this transaction. I want to address the issue of the 2 1/2 year vacancy and what we have tried to do to get rid of the building in that time. We have had the facility with J.P. Wiegand, and this property has been under contract since November, but the original contract was for about six months and it has been extended on a monthly basis for various reasons. I have instructed Wiegand during that period of time to continue to actively market the building. We are tenants in 100's of centers and I am constantly talking to other retail tenants and we are always talking about this building and trying to get someone to locate in it and we have not had a good proposal to other than this one to occupy this center. This has been the best proposal for this building in the 2 1/2 years it has been vacant and we have constantly during that time actively marketed the building even though it was under contract.

HAROLD ERNEST, 1252 N. WESTLINK, WICHITA KS 67212 I attended the meeting in August and I support the application. One thing I can add that hasn't been said, I felt they had addressed all of the objection very well of neighboring people, the security, the noise. There is a large building at Ridge and Central an Osco building that has been there many months vacant. I don't think that this building is going to be used from what the seller just said in the immediate future and I think this facility would aid that shopping center, certainly more than a vacant building.

DIANE LEVENS, 8406 MEADOWPASS, WICHITA KS 67205 In addition to agreeing with most of what has been said here in support of this application. I used to live across the firehouse down on Caddy which is now the EMS center, and I was awakened several times in the middle of the night by sirens. But it was well worth the inconvenience of being awakened because I knew that if I needed them they were there. Our closest ER is St. Francis, and I have not counted the stop lights and the railroad tracks but there are quite a few of them. My husband and I are both heart patients and we would like to be able to stabilized before we have to get stopped by a train or some stop light as we are trying to get to St. Francis for any care. There are a lot of athletic fields there and there are injuries that happen, compound factures, minor fractures, a 24-hour facility would be nice for these parents who are having children that are out there being active.

KURT HARPER, SHERWOOD AND HARPER, 833 N. WACO, WICHITA KS 67203 I would like to address the eight or nine factors that you are to consider in evaluating the request to change the CUP. The request is not only to amend the CUP which currently allows a variety of retail and retail service oriented uses such as medical uses and shops, to add a possibility of using this property for an institutional use and they have also asked for reason that are entirely unclear for an amendment to add educational uses such as universities.

The factors that you are called upon to consider is our first zoning uses and character of the existing neighborhood. The property is a retail center that is bounded very closes by residential property and that is the same character of all the other corners basically at 13th and Tyler. Introduction of the clinical setting and an ER would represent a dramatic change from all of the existing uses and a dramatic burden on the residential properties in the area. There is a substantial difference between an emergent patient and an outpatient in a physicians office.

Secondly, the suitability of the subject property for the uses to which it is currently restricted. Right now it is zoned for use in a retail or a variety of other light commercial applications. What is currently the situation for the property is not under an option it is under a contract contingent only upon this Board's actions regarding the zoning. But it is under contract to a party that owns 12 acres currently zoned for emergency use 1,000 feet away. The property without that restriction in the contract is marketable as you will hear more about from Mr. Oborny later.

The extent to which the removal of the restrictions would detrimentally affect neighboring properties is a factor you should consider. I think you will hear from the other commercial tenants, and the residential occupants as to how it will impact them. Particularly with the matters of yards separating their houses or their businesses from the emergency traffic that is contemplated.

Regarding the public health issues it is not just a question for you to determine whether it is consistent with public health that this change be granted, but to weigh in the balance the benefit to public health and the harm to the property owners. I would suggest that with the available facility 1,000 feet away, public health can be served and in balance the detriment to the surrounding properties substantially outweighs any benefit of placing an emergency facility at this particular corner.

DUNLAP We are very familiar with the requirements of what we can do for zoning, do you have additional comments?

HARPER I would like to address the remaining factors briefly in this summary fashion. Regarding the visibility concerns expressed by the applicant, as you can see by the aerial photo there is every opportunity to provide easy access and easy visibility for the property already under their control and properly zoned.

Whether or not the property conforms to the Comprehensive Plan and in ruling that the existing CUP did not permit the proposed use, Mr. Schroeder observed that a proposed ER use on this parcel is inconsistent with the Comprehensive Plan Land Use Guide Map effective January 1, 2002. Because it contemplates commercial and not institutional application. So this would represent a deviation from the currently approved Comprehensive Land Use.

The impact on community facilities, the staff found no effect either positively or negatively, and I tend to concur in that. There will not be a dramatic impact on the community facilities, or the public facilities presented by this use.

Finally in looking at opposition by neighboring properties, I think you will find if you consider the addresses of those who have spoken as proponents you will find they are outside the zoning of influence.

GARY OBORNY, OCCIDENTAL MANAGEMENT, 300 N. MAIN STE 201 WICHITA KS 67202

I represent Northwest Centre, I am the managing partner and I am also the President of Occidental Management who is the property manager of this location. We have owned this particular location for approximately seven years. I would like to say upfront that we also represent a number of residents and there are some residents that want to speak today, there is a number of residents that were not able to be here today but if you take a look in the handout that I have given there are some 15 tenants represented that have signed protest letters in regards to this issue. There are approximately 35 residents that have signed protest letters in regards to this location also. All of those individuals and businesses are in the represented halo area that would be impacted by this particular usage.

In meeting with all the individuals I need to say that we are not opposed to a ER location on the west side of Wichita. We are a proponent of that, but we do not believe that that this particular location is a good location to put an ER. There is already 12 acres that a year ago Wesley did a CUP amendment and adjusted their property to allow for some additional residential use to the north of this property and there is 12 acres left over that they could develop for an emergency room, on an area that they already have usage and a 24-7 type operation going now. We believe that it would be good planning for those areas that have impact to the community that they be put in an area of like usages.

Where they are planning to ambulance entrance is approximately 90 feet from these particular individuals residences. That is going to cause from the residential side that they feel very concerned about that impact. If you look at this tree line here it is almost the size of their lots, some 100 foot wide creating a larger barrier between what is potentially residential and what is now commercial. If this was located in this area there is a detention pond that is a natural barrier now on the east side, if this was located on the west side of the property this would shield the residential area some 3-400 feet to the north and probably 5-600 feet to the east. That in my book would be a lot better usage and a lot better impact by use of the emergency room.

One of the main items that the city has put in their recommendation is the suitability of the subject property is no longer suitable for what is used. You have a purchase contract that was written that Wesley has been under contract for over one year and some letter of intent time involved in there to, probably a couple of months to get that negotiated. If you go to the next page you will see that they placed a grocery store restriction on this, this was built for a grocery store, there are a number of things in this particular building that have been done that necessitates a usage of that nature. So by the seller asking for a 10 year restriction on grocery store usage that has limited the market of availability to the open market. It would be our stance that they have made this restriction themselves in order to create a limited market for this building so that another grocery store would not go back in there. That effect the marketability of the property.

On the next page you will see a proposal or a letter of interest for another party, some of the people that we work with on a national-regional basis because we are in the area have talked with us in regards to this particular property. There is interest for a 30,000 foot user, a retail user which would compliment our use and that shows the viability of the property.

The next executive summary from J.P. Weigand who we bought the property from, when we purchased this property we purchased the property with a comfort level that we were not just purchasing a building and land but a CUP. That CUP gave us the comfort level that the investment we were making was appropriate and we were sure that level of appropriateness would stay and same with our tenants.

SHERMAN You said you are the management company of this mall, what is your occupancy rate right now?

OBORNY Presently I believe it is 87 percent, it averages about 87 to 92 percent at a given time.

SHERMAN Okay, of that how many of the persons are opposing of that 87 percent?

OBORNY We have approximately a little over 50 percent that have signed letters when you use their square footage. My two largest retail tenants are 6,000 square feet a piece.

SHERMAN Who are they?

OBORNY One is Dollar Tree and one is Hallmark and they both represent two of our largest retail tenants. They have co-tenant agreements which allow them to terminate agreements based on the Albertson's location being a retail uses. So by changing this usage this would keep us from being able to cure this situation and being able keep these tenant from terminating.

SHERMAN They do understand the traffic impact? Because when you say Dollar Tree, and Hallmark most of them are lower end items so they depend on activity coming into the location.

OBORNY It is actually the reverse with this particular usage. It is not a negative for us to have high retail traffic, that is a plus. Our tenants want high retail traffic, the problem is that ER patients do not purchase items. All they can control who will go there as a trauma one patient with their ambulances they can not refuse a trauma one patient that drives up. Where criminals may be shot, police end up arresting them in the parking lots trying to get into the ER although they can control the ambulance deliver of trauma one they can not control the drive-ups and that is 90 percent of this equation. That is why if you look nationally there is not an ER situation in retail center/service oriented shopping in Wichita or Kansas, or anywhere in the nation. We have done a lot of investigation in this.

GARREN SMITH, BANKHAVEN located at 13th & Tyler It is pretty common for banks to pick a retail area to establish a bank. Five years ago we picked this site as very attractive because of that retail location. Albertson's where this particular location is the single largest retail site and I think it would greatly impact us. We have a captive audience if you will for retailers that would visit this site and I think this would be disruptive with a emergency facility located here.

TAMMY MCCLERNON, 1460 N. JUDITH, WICHITA KS 67212 I own Haircraft in Northwest Centre. We have been there for over 20 years and I am not opposed to an emergency center on the city's west side. I am opposed to it being in a retail center, I do not feel like it is going to benefit my business at all.

JEFF WEINMAN, 8723 Nantucket, Wichita, KS I have a handout of approximately 10 aerial photos. I live directly behind the Albertson's. I support Wesley in having an ER on the west side, just not in this location. I think this will dramatically, negatively impact the homeowners that live behind it. (Goes through aerials) showing the nationally accepted and practiced zoning standards of ER and medical malls. The very last photo shows a building with a big red X on it, the red mark on the northwest corner of that building is the proposed ER site entrance, it will be 28 yards from our backyards. Currently the barrier wall is not in code with the screening code, parts of that fence is only 5 feet tall and parts are a 6 and with that close distance to our backyards the homeowner that live there are not going to be able to enjoy the use of their property. Lastly, the very back page is the Kansas State #8-1506 about emergency vehicles, Kansas State Law mandates that every ambulance performing duties as an emergency vehicle have to run red lights and siren. They can't turn them off a couple of blocks away, going through 13th and Tyler. This buffer behind Albertson's the wall was designed for retail business hours, everyone entering from the south side of the business not from an entrance on the northwest corner of the building 24 hours a day.

STEVE CRAIN, OCCIDENTAL MANAGEMENT Concerning our tenants who are opposed to this proposed facility, there were 13 that were opposed, there is another dozen tenants that are medical related and another half are in the real estate industry, they chose to remain neutral concerning this use issue on a basis of a potential political conflict.

ALAN MEIERS, OCCIDENTAL MANAGEMENT As far as the lease ability of that center we currently try to lease that center at the Northwest Centre we come across larger tenants that we try to market to. We have come across in our dealing with larger big-box tenants that would take a large portion of this empty vacant building, it is not a fact that it is a unmarketable building it is just unmarketable because of the circumstances within this development. I would point out that it could be properly marketed and developed if there was intent to go toward the retail aspect of it.

PAT HUGHES, ADAMS AND JONES, ATTORNEY REPRESENTING WESLEY Mr. Harper asked the question about the educational use that is proposed or that might be possible. Wesley is a teaching hospital and it is possible that Wesley might want use the facility here as part of pursuing that teaching mission.

We have heard much this afternoon about the happenstance that Wesley owns other property in the area. It is simply that. Wesley has reviewed sites, has made a decision about what criteria are important to their business plan and they have decided that the appropriate location in accordance with their business plan and in accordance with their criteria that they have selected for a facility on the west side is the one that we are talking about today. Not the one that they happen to own that is nearby. Similarly we hear that there is a concern about a co-tenancy clause that may or may not be exercised if vacant space is instead used for medical office space and for an ER. Again that is an election not of a matter of a legal body but an election of a landowner and the tenant and they decided to make a contingency to their leases, a contingency that doesn't depend on the CUP because of course office uses are allowed within the facility and the CUP as it is. We have heard that there are maybe other customers, or other buyers for this properties, yet the owner who has the motivation to find those other buyers has not been successful in doing so.

We have heard generalized concerns about security issues. Wesley has every intention of providing surfaces for the community in which they live and which they operate which are consistent with the needs of that community. Those concerns and needs include potentially security issues and in fact they will provide what security staff is necessary to support this facility.

At the DAB meeting the community policing officer came in to talk about the circumstances within the community and he noted that a number of the problems that he had reported earlier under control but they continue to have a problem with crime in parking lots in retail area. In fact it is true there are crime problems that are adherent in a community and those are not unique to an ER.

Wesley remains willing to do what is necessary to address the legitimate concerns of their neighbor. In doing that they have met with neighbors and they have been in community meetings. They have reached a decision that if it is necessary to improve the buffer with a retaining wall they are open to increasing the size of that retaining wall. They have analyzed the issues and staff had analyzed the issues that have been raised. Wesley comes to the conclusion that this is and staff concludes that this an appropriate place for a much needed an important facility for the community.

Are there other theoretical places that maybe it could go? That is not really the issue before us. The issue before us is analyzing these facts. Does the landowners have a legitimate reason for requesting this change? I think that is clearly the case.

MITCHELL Mr. Hughes, could you answer the question, is this an all or nothing for Wesley if they don't have this location will they not put an ER on the west side?

HUGHES What I can say about that is this proposal for the ER and medical office space, they are not going to be developing this building without that ER component.

SERRILL This is our business plan and we feel this is our best location for the total package that we are attempting to put together. We have not analyzed any other alternative to the detail that we have this one at this time. Other than it is our best location, for not only the accessibility, visibility issues, but also from a cost and the ability to get the facility renovated and operational in a shortest period of time.

ORIGINAL MOTION: To DENY the application based on the evidence presented by the participant in the hearing today and not accept the staff recommendation.

MITCHELL moved, **GAROFALO** seconded the motion.

GAROFALO I feel like this use is incompatible with the immediate location very, very, close to residences. There is an available site very close by that the hospital already owns, that might be more appropriate as an location. The property that they want to rent the building the old Albertson's building appears to be still marketable for retail which would be much more compatible with the shopping area there. As well as, the strong neighborhood and tenant opposition.

SUBSTITUTE MOTION: To approve the request according to the recommendations of the staff.

HENTZEN moved, **BISHOP** seconded the motion.

SHERMAN I will support the substitute motion because I do think this is well needed in the community and I do think it is compatible and I think eventually it will be a great move for this area.

SUBSTITUTE MOTION CARRIES: VOTE (7-4). **JOHNSON, GAROFALO, MCKAY, MITCHELL** opposed

9. **Case No.: CUP2004-31 DP18#2** - Nuot Nguyen and Ly Ngoc Thi (applicant) / Robert W. Kaplan (agent) Request Amendment to River Bend Shopping Center Community Unit Plan

Lot 1, W. F. Farha Third Addition, Wichita, Sedgwick County, Kansas. Generally located North of 21st Street North and west of Hood.

DEFERRED SEPTEMBER 23, 2004

BACKGROUND: The applicant is seeking approval to allow an existing business located at 1514 west 21st Street that currently holds cabaret and drinking establishment-restaurant (DE-R) licenses to also obtain a dance hall permit. Based upon an interpretation provided by the Superintendent of Central Inspection, businesses holding all three licenses – drinking establishment-restaurant, cabaret and dance hall - are to be treated per the *Unified Zoning Code* as a "night club in the city." The applicant indicates he would like to hold dances a couple of times a month at this location. Given the Superintendent's interpretation the applicant could not legally allow dancing by the public without this amendment.

The crux of this application is that if the request were to be approved, then the limitation that is currently in place on the amount of alcohol that can be sold on this site by virtue of its current DE-R license would be removed. Without the DE-R license restriction, there are not any restrictions on the volume of alcohol that could be sold. Establishments that dispense alcohol, provide live entertainment and offer public dancing can be good neighbors to other businesses, but they can also become nuisances that generate excessive noise, enable less than desirable public behavior – assault, property destruction, weapons violations and disturbing the peace. Such behaviors can quickly detrimentally impact adjoining properties, especially when residential uses are nearby.

The existing business is part of an existing retail strip center that is a platted lot located northwest of the intersection of Hood Avenue and 21st Street, and is located on Parcel 1 of the River Bend Shopping Center Community Unit Plan (C.U.P.), DP-18. The

applicant's property is zoned LC Limited Commercial, subject to the conditions contained in DP-18, including the development standards for Parcel 1. Uses permitted in Parcel One are restricted to: Shopping center, department store, restaurant, offices and other similar uses permitted in "LC" zoning. Existing businesses located in the CUP include: Mazatlan bar (DE-R plus dance hall that closed or let its licenses expire on 8-10-04); clothing store; grocery store, bus service, café, vehicle repair and the El Zarape Bar and Grill (DE-R).

Parcel 4 of DP-18, located north of Parcel 1 (north of 22nd Street, between Garland Avenue and Hood), was, in 1969, granted a Board of Zoning Appeals exception (BZA 18-69) to permit off-street parking on this lot that is zoned SF-5 Single-family Residential. The only use permitted by DP-18 on Parcel 4 is "parking for Parcel 1." If this request is approved, club patrons could park on Parcel 4, in addition to the parking located on Parcel 1.

Single-family Residential zoning and uses are located north, east and west of Parcel 4. SF-5 Single-family Residential, B Multi-family Residential, LC Limited Commercial and GO General Office zoning surround Parcel 1, the site of the proposed club. Surrounding uses include: medical offices, church, apartments, office, single-family residential and retail services.

A "night club in the city" is defined by the *Unified Zoning Code* as an establishment that provides entertainment, which may include the provision of dancing by employees or patrons, and where cereal malt beverage or alcoholic liquor are offered to the public or its members, and which may or may not serve food. "Night club in the city" is a use permitted by right in the "LC" district except when it is located within 200 feet of a church, place of worship, public park, school or residential zoning district. A Conditional Use (or an amendment to a Community Unit Plan) is required if a night club is located within 200 feet of the aforementioned uses or zoning districts.

In this situation, three circumstances trigger the need for the amendment. The first situation is the proposed site is located within a C.U.P. whose list of permitted uses does not include "night club," and those uses listed are deemed to be less intense than a "night club in the city," so an amendment to DP-18 is required. The second circumstance is the space within the strip center housing the proposed club and the parking that supports the club is located within 200 feet of residential zoning. The space proposed to house the club within the retail center is located within 100 feet of residential zoning. The parking for the club located on Parcel 1 is located within 100 feet of residential zoning, while the parking permitted on Parcel 4 for uses located in Parcel 1, including the club, is adjacent to single-family zoning. A third trigger is that the Office of Central Inspection has determined that any business holding a liquor and or cereal malt beverage service, offering live entertainment (cabaret license per Chapter 3.08.030) and a dance or dance hall license (per Chapter 3.28) requires that the use be automatically classified as a "night club in the city."

CASE HISTORY: The W.F. Farha 3rd Addition was approved in 1966. DP-18 was approved in 1984. In 1995, an administrative adjustment was approved to reduce the width of a service drive along the CUP's north property line.

Currently 1514 west 21st Street has "drinking establishment-restaurant" (DE-R) and "cabaret" licenses. A "DE-R" is a restaurant that serves alcohol but whose food sales exceed 50 percent or more of their gross sales (and less than 50 percent of alcohol sales). A cabaret provides some form of live entertainment such as dancing or a disc jockey. (In contrast, a "tavern" or "drinking establishment" is a business that in a six-month period derives less than 50 percent of its gross revenues from the sale of food and beverages for consumption on premises. A tavern serves only 3.2 beer while a drinking establishment sells strong beer, anything higher than 3.2 percent alcohol, and alcoholic liquor.)

ADJACENT ZONING AND LAND USE:

NORTH: SF-5 Single-family Residential; Residential

SOUTH: GO General Office; Medical Office

EAST: SF-5 Single-family Residential, LC Limited Commercial; Residential, Office and Retail

WEST: SF-5 Single-family Residential, GO, General Office and B Multi-family Residential; Church and Multi-family Residential

PUBLIC SERVICES: At this location 21st Street is a four-lane arterial carrying 14,600 to 17,500 average daily trips. All municipal services are available. Police incident reports for 1514 west 21st Street indicate that between January 1, 2003 and July 20, 2004, 36 incidents were reported. In comparison service calls for the same time period for nearby addresses were: 1500 west 21st Street had two calls; 1504 west 21st Street had one; 1510 had two; 1518 west 21st Street, 1521 west 21st Street and 1580 west 21st all had one; 1530 west 21st Street had eight and 1590 west 21st Street had two service calls.

CONFORMANCE TO PLANS/POLICIES: The *Wichita Land Use Guide* map depicts this site as appropriate for commercial uses. The Comprehensive Plan recognizes three types of commercial development. This development falls within the category of "neighborhood center." Neighborhood Centers are 4-15 acres in size and contain up to 200,000 square feet of floor area. These centers are to allow for market competition, but avoid excessive concentration of commercial development at the intersection. The Comprehensive Plan does not contain guidelines specifically for night clubs, drinking establishments or taverns. However, the Plan does have an objective to minimize detrimental impacts of higher intensity land uses located near residential living environments (p. 12, Land Use-Residential Objective II. B). Strategy II.B3 states that there is a need to evaluate the effectiveness of regulations aimed at reducing or preventing the detrimental impacts of land uses that produce excessive odors, noise or safety hazards upon residential areas.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be DENIED.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The surrounding area is a mix of zoning and land uses. Zoning found near the site includes: SF-5, Single-family Residential, B Multi-family Residential, GO General Office and LC Limited Commercial. Uses range from single-family residential, apartments, offices and retail.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned LC Limited Commercial subject to the development standards contained in DP-18. Uses permitted on the site are: Shopping center, department store, restaurant, offices and other similar uses permitted in "LC" zoning. The site's current zoning permits a range of uses as currently zoned. Approval of this request would introduce a more intense use that is not appropriate given the application areas proximity to residences (less than 100 feet) and a church (approximately 300 feet), and the parking for the proposed use (adjacent to single-family homes).
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Currently the sale of alcoholic beverages is limited by its DE-R status, approval of this request would remove this limitation which could lead to a loss of enjoyment and value by surrounding properties.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial would presumably cause the applicant an economic loss while continuing some level of protection for the nearby residences and businesses.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The *Wichita Land Use Guide* map depicts this site as appropriate for commercial uses. The Comprehensive Plan recognizes three types of commercial development. This development falls within the category of "neighborhood center." Neighborhood Centers are 4-15 acres in size and contain up to 200,000 square feet of floor area. These centers are to allow for market competition, but avoid excessive concentration of commercial development at the intersection. The Comprehensive Plan does not contain guidelines specifically for night clubs, drinking establishments or taverns. However, the Plan does have an objective to minimize detrimental impacts of higher intensity land uses located near residential living environments (p. 12, Land Use-Residential Objective II. B). Strategy II.B3 states that there is a need to evaluate the effectiveness of regulations aimed at reducing or preventing the detrimental impacts of land uses that produce excessive odors, noise or safety hazards upon residential areas.
6. Impact of the proposed development on community facilities: It is possible approval of this request could result in an increased demand for police services.

DALE MILLER Planning staff presented the staff report.

JOHNSON Dale, will this require a cabaret license to operate this?

MILLER They have a cabaret license now, and they have a drinking establishment-restaurant (DE-R) license now.

JOHNSON I thought there was some ruling on that being too close to a church.

MILLER Apparently they were able to get those licenses but they could not get this one, whether those licenses were issued properly I can't speak to that.

BOB KAPLAN, KAPLAN, MCMILLAN AND HARRIS Obviously my representation is of the current lessees of the property at 1514 West 21st Street. The reason I tell you that is that we spent a rather long evening at the DAB Tuesday night primarily discussing the transgressions of the prior operator, with whom we have no involvement nor is what the prior operator did for about eight years relevant to this hearing.

The lessees' language difficulties aside, they did talk to the city and they felt that because the prior operator had had a dance hall license, was allowed to have food and beverage service, and had live entertainment, they could do the same thing, and on that basis they leased the property. Finding out that this was not the case is when I entered the case, and asked Mr. Schroeder for a zoning interpretation letter. Kurt came back with his zoning interpretation letter as to precisely to what Dale told you, and that is if you have alcohol, live entertainment, and if you have dancing, then you have a night club. If you have a night club within 200 feet of a residential area you have a Conditional Use or in this case you have a CUP Amendment, which would control.

It was very obvious to everyone at the DAB meeting that this was turned down not on any basis of any experience with my client who owns and operates several Chinese buffets around town. But on the basis of the fact that they said this place has been a mess with beer bottles, and noise, and shootings etc. Then one gentleman said that we couldn't have such a facility.

We do have a valid cabaret license and we do have a valid DE-R license. Not a drinking-establishment license, but a drinking-establishment restaurant license. You all know that we can serve alcohol. We have to maintain the requisite percentages. We can't have more booze than food, but if we have more food than booze we are okay, and we hold those licenses. What we sought to do was allow dancing.

Here was the proposition that I made to the neighborhood. What we will do, and what I am suggesting to you, and this can be done within the CUP with your approval, we want the facility to be open only two Saturday nights a month. That is all that we are asking for, two nights a month where we can host affairs whether, weddings, anniversary, birthday parties, or also available to the public if we don't have a private event. What we are going to do is cater the alcohol and the food, and I told the neighborhood that we would surrender to the State of Kansas our DE-R license, and give it up. If you don't want this place to hold a license to sell alcohol we will give it back. We will give it up and we will cater. We will use a licensed caterer who will need permission of the ABC under the State Code for each and every event. Then we want to operate from 9:00 p.m. to 2:00 a.m. for two Saturday nights a month. So 29 days a month this place will be closed.

I visited with Dale and he said we could write such a CUP Amendment, and include provisions that dances are allowed but only two Saturday nights per month at specific hours. Dale said that we could do that. So that is our request. I thought that was a good tradeoff for what we can do now with our cabaret license and our DE-R license since we can operate seven nights a week; can't dance but we can serve alcohol and we can have live music. I thought if the neighborhood is concerned about all this constant

activity then they really ought to hop on two nights a month, but that was not the case. As neighborhoods go they really don't want anything to happen there; certainly nothing that involves a public event of any kind and that is their right. But here we sit with the right to do this already except for the dancing.

I think these folks ought to be given the chance. These folks operate Jade Place, and several others, and to suggest that these people will bring chaos to this neighborhood is just rank speculation. I don't know anything about the other guy who ran it for eight years, and if the neighbors say that they have problems I will accept that, but it ought not be denied on what happened yesterday. We have had this place closed since February or March trying to get something done. I believe that the Asian community and Vietnamese community is just as entitled as the rest of us to have a venue where they can gather, and they can have events, and this is the location for that.

MITCHELL In your opinion are the licenses they hold now legal?

KAPLAN I have no reason to think they are not. The appropriate applications were made. They went through the appropriate process, and they went through the Police Department. Mr. Schroeder was personally involved in conversation in the issuance of those licenses. I am satisfied they are valid. The only thing that happened was when we applied for the dance hall, then Mr. Schroeder said wait a minute either the cabaret or the dance hall, you can't have both because you already have a DE-R. This is not really written any place, and this is the opinion of the Zoning Administrator, and he is the one to make that interpretation at that level. I can't fault the fact that he has the right to render that opinion. He says when you put those three things together you have established a night club. If you are going to drink, dance and have live music you have a night club. If I had a jukebox that wouldn't be a night club I guess. So that is what brought down the need for a Conditional Use and consequently the CUP Amendment application. I either have to do that or take issue with his opinion.

MCKAY Are you saying the proposal you are making rather than the proposal that was originally mailed out was to be open only two Saturday nights a month?

KAPLAN That is correct. That came about after we discussed this, and after we found out that we kind of stepped into a hornets nest here, and my folks are telling me that if we can operate two nights a month from 9:00 p.m. to 2:00 a.m. and that is all. I asked staff if we can write an amendment that way, and staff agreed if the Planning Commission approved.

MCKAY They will be open only two days regardless if it is Saturday or not?

KAPLAN Two Saturday nights a month, they have committed the other days that the front door will be locked. That is all we are asking, and I thought that was a great trade off.

SHERMAN They are wanting to use this as a private hall only two nights a month, versus using the current licenses they have to operate four to five days a week? Did they apply for their licenses or were they assumed in the sale of this business?

KAPLAN The cabaret and the DE-R licenses; he can open a drinking-establishment restaurant and serve his Chinese food which he does successfully at several other location in the city, and can serve alcohol, and he can have live music, and he can do that seven nights a week and be valid as long as those licenses are valid, and they were just issued so they have basically their year to run. He has opted instead, because he wants the dance venue, because he wants the venue for the community, to offer a venue to the Vietnamese community, which is prevalent in the area. But also on those Saturday nights if he doesn't have a private group then he wants to open it to the neighborhood community, and let anyone who wants to come in from the public enjoy the live music and the dance.

SHERMAN This place has been closed how many months?

KAPLAN It has been closed since February or March. We have a lease that goes back to February or March. I think we started paying rent in May. I think we are paying about \$4,500 rent on this thing, and that has been going on and the place is closed.

SHERMAN When he applied for these licenses did they come with the sale of the business or did he apply himself after he bought the business?

KAPLAN In terms of the date of the lease? I think it was leased first, and then the licenses were applied for. We would have to have had a facility to apply for the license.

SHERMAN Did he buy this business as it was with the current licenses and then he knew then he decided to change his mind.

KAPLAN His intention was to have dancing, and drinking and food, and live music because the prior operator did that, I am told for about eight years without objection from the city. Then when they went to get their dance hall licenses then the Superintendent said no you couldn't have all three; then I wrote the letter and said what if we cater? We will surrender our DE-R license, and we will cater. Kurt Schroeder wrote back that, Bob, I think it is the same thing whether you cater, or you have a DE-R license. You are not going to have alcohol and dancing and live music without an amendment because you have a night club in my opinion.

SHERMAN You are not your own caterer are you?

KAPLAN He is not the lessee's under the premises. He is not a caterer but they will use a licensed caterer. They will have to be licensed by the ABC. I have helped them make a catering license for Jade Palace because they hope to cater from Jade Palace to many events, and they may cater this location also.

BISHOP Did you say this has been closed since February?

KAPLAN Since we leased it they have not operated it. They have operated one or two days is all I think they were opened.

BISHOP According to the staff report, police incident reports for 1514 West 21st Street indicate that between January 1, 2003 and July 20th, 2004 there were 36 incidences reported. Are you saying that is a previous operator?

KAPLAN I would take serious exception to that, not that I have researched it but these folks leased in early 2004. I have the lease, let me look. The lease was entered into on the 4th day of March 2004 and the rent commenced in May 2004 and it is a five-year lease. We had no involvement with this in the calendar year 2003 or the first, three or four month of 2004. This place has been closed these last number of months and it is closed now.

SCHLEGEL That police report was from January 1st, 2003, so that incident report included all of 2003.

BISHOP But it runs through 2004, and it is not broken out.

SCHLEGEL Those incidents could have happened prior to this new lease.

KAPLAN I would not quarrel with an official record but if the official record shows something; but my understanding is that they have not yet opened this establishment. It is closed now, and they are leaving it closed until we get this situation resolved. If you don't approve it, they will go in and operate the restaurant, live music, cabaret perhaps, they have to do something because they have to pay rent.

MCKAY Using your scenario we have to amend to the CUP and then get a Conditional Use?

KAPLAN I don't think so, but staff may know. I think the CUP Amendment allowing a dance hall use; since I already have the other uses will cover it I don't think it will need to go through the Conditional Use process. Unless the use is specified in the CUP I couldn't do it anyway, I was locked out with the CUP Amendment.

MILLER That is correct.

GAROFALO According to the report it says that existing businesses located in the CUP include: Mazatlan bar (DE-R plus dance hall that let its licenses expire on 8-10-04). I am talking about on page two in the staff report. Basically you clients haven't operated the place at all or maybe a couple of nights?

KAPLAN That is my understanding and they are nodding affirmatively, so I believe that to be true.

GAROFALO You don't know anything about this Mazatlan bar being closed, or why it was closed?

KAPLAN No, I have never been on the premises.

MILLER They were operating under a DE-R, which requires them to have more food sales than alcohol sales. The Office of Central Inspection apparently was going through a comprehensive audit and they failed that audit. So they have closed because they did not meet that DE-R requirement.

GAROFALO These 36 incident reports, on page 4, do you know if that had anything to do with that place?

MILLER No, I just gave the lady in the police research department the address that you see down here; just in terms of comparison, what were the number of calls for these addresses in the same time period and she just gave me a total.

BISHOP For that address; for the application address?

HANK BLASE, 1601 LYNNHURST I own the law office just across the street from this property at 2302 N. Hood, also the residence to the north and to the east of this property. The law as was presented to Mr. Kaplan which he chose not to accept, and has not explained why not. The law as given to him by Kurt Schroeder, and the letter that he referred to that a "night club in the city", means an establishment located in the City of Wichita that provides entertainment which may include the provision of dancing by employee or patrons and where cereal malt beverage or alcoholic liquor are offered to the public or its members.

Two things, live entertainment and alcohol mean a "night-club in the city". So Mr. Kaplan stands here and tells you that they have a license to provide live entertainment, and a license to serve alcohol, and they can do that both now. That is not correct, because it would be a violation of their zoning. They can cater with live entertainment or they can serve alcohol in a restaurant under the current license according to the law of the city, but you can't do both.

He refers to the three things, the dancing, the only time those three things were referenced in Kurt Schroeder's letter which he states, "Also it has been my previous opinion/determination that an establishment that offers alcoholic liquor or cereal malt beverage to the public and provides live entertainment and dancing shall be classified by the Unified Zoning as a night-club in the city." He doesn't say it is okay to do the two things without dancing but he says his prior determination that he has made and been on the record was for the three things. Now it is a question of the two things, live entertainment and alcohol. As I read to you the City Ordinance that defines "night-club in the city" it does not say anything other than that entertainment may or may not include dancing. It could be a band, or a musician or it could be anything, just entertainment; it doesn't even say live. It says entertainment and where cereal malt beverage, or alcoholic liquor are served, those two things means that it is a night club.

I know that there are many people here that are going to tell you the experiences that they are going to tell you the experiences that they have had in this neighborhood, and why any night club for however long that it is operated is not what they want to see there.

AARON BLASE, 2302 N. HOOD I live directly across from this property. I did handout a letter. I am here today representing just myself, and my family. We have 46 signatures on petitions all in opposition to this. This is a little different then most cases because

we have dealt with an illegally zoned dance hall here for seven years. It was only opened only a handful of nights a month, four at the maximum. It was not open every night of the week, and it was still a tremendous problem. Since they closed and moved elsewhere in January this year we have had peaceful and quite weekends for the first time in seven years, and we would like to keep it that way. When I moved into the neighborhood in 1997, Cloth World was in the place, and later that year a club opened called Latino Boom. They had themselves used a caters license to get alcohol in the door. There is no oversight to catering. They catered their own dances too. These were not neighborhood dances. The neighborhood is opposed to this, tremendous crowds, always alcohol.

For these seven years, my family and my neighbors were forced to call 911 numerable times for gunshots we would hear, fights that we would see in the parking lot, loud music coming from the club, loud music coming from the parking lot itself, vehicles in the parking lot squealing their tires, traffic circulating through, up and down the street, through the parking lot and around. A couple of years ago, I witnessed a big fight out in the parking lot, and somebody got stabbed and received serious injuries as a result of that.

About a year ago I was alerted to a police helicopter overhead, and I looked out and I saw more police officers' vehicles there then I have ever seen before, and I thought somebody had been killed. It turns out that two police officers had been mobbed by a group as the officers were going to investigate a disturbance call at that club. One of those officers is no longer able to work, and has been told he will never be able to work as a police officer again because of the nerve damage that he received. People go outside to urinate. We don't want to see this. There are hundreds of bottles strewn about both in the parking lot and up and down the street in the yards after each of these dances. This is not a good neighborhood for raising children.

Mr. Kaplan's client now wants to move in. I don't know who his client is. It is obviously not the applicant or the owner. The owner is the same owner who was the owner during the time the Latino Boom was there. The ownership has not changed. I assume he represents the applicant. I don't know if he represents the tenant or if he represents these caters? The two individuals that are here, as I understand it, are the caters, and I guess they are not the tenant. I don't understand the relationship here but I do know the individual whom I have dealt with who is the new tenant, operated a club and his name is Willy Garcia, and he operated a club called El Tequila which was at the Twin Lakes Mall, and it had a host of problems including a fatal shooting out in the parking one time.

The city recognizes now that the zoning is inappropriate in this location for a dance hall and a nightclub because of its proximity to a residential neighborhood. In fact, this change in zoning should not take place because residences are too close to it. Neither the property owner, Mr. Kaplan's client, whoever that is, nor these two folks that are here today have any control over the people who come to these dances. There is nothing they can do, or promise that they can make is going to make this change the right thing to do.

My wife and I have two young children under the age of six. Our neighbors north of us have a young daughter. The neighbors north of them have two young children under the age of five. The entire neighborhood does not want this zoning change. We have had to deal with a tremendous amount of problems. You will hear more from others through these seven years. Dance clubs and night clubs are not permitted within 200 feet of residential zoning for a reason, and that is to protect neighborhoods. We should strengthen this neighborhood and make it safer for folks and raising their kids. There are a host of reasons to deny this request.

MCKAY You moved here with this situation already there?

BLASE When we moved in it was Cloth World that was the occupant.

MCKAY This has all happened since you moved in?

BLASE Yes that is correct.

VERONICA VALENCIANA, 2320 N. HOOD, WICHITA, KS 67204 I live in this neighborhood and when we first moved in 1996 it was peaceful. In front of you, you should have a copy of the petitions that we signed. I went around the neighborhood and talked to the neighbors in regards to what they want to do with this building. As you can see, every person that I knocked on their door does not want this in our neighborhood anymore. The last few months have been very peaceful, and when we first moved in 1996 it was peaceful, and it was the neighborhood that we wanted to raise our children in. Now we have two kids, and at times when I get home at night, I have to tell my kids to run inside the home because of all the chaos that is going on outside. The drunks, the loud music, the drug dealing, it is numerous things and it is not safe. We bought our home to make a nice home in a nice neighborhood. It is not a nice neighborhood with this club across the street. I ask for your support in denying this application because the only thing that it will bring is gang violence and bad things.

GAROFALO Since you are familiar with this petition, all of these addresses and people are residences in the immediate area there?

VERONICA VALENCIANA Yes, as you can see on the addresses it is the 23rd block of Hood, on Garland and on Payne. This is the affected area.

GERARDO VALENCIANA, 2320 N. HOOD I have a video I want you to see of what is going on there at night. My wife and I have lived here for seven years, and ever since the club has got there, there has been nothing but problems. I have seen people come and park in my driveway, and then I have to park somewhere else other than my own driveway because of the traffic. We have shot several videos. This is just one of them we would like to share with you today. This is just right across the street from us. This is not good for our neighborhood, and to live with right across the street of my home this has been happening. I work at the detention facility and there are times when there are people who are coming in, officers are bringing people that get arrested at that location. I work at nights and it makes me think of the safety of my family right across the street.

ROSALIE BRADLEY, NORTH RIVERSIDE NEIGHBORHOOD ASSOCIATION PRESIDENT, 1401 JULIANNE, WICHITA KS 67203 My neighborhood is directly across the river, down there where you see that across on the other side of that river are all residential properties. Mr. Kaplan, my neighborhood strongly agrees with this being denied. Mr. Kaplan has argued that the past history, the

behavior of the business should not be held against his clients. Mr. Kaplan is here representing people seeking to put in a nightclub, not the owners of the property.

The zoning change goes with the property and not with the clients. Once granted there is nothing anyone can do to prevent this from becoming another Latino Boom, which is what was in that, which the police finally got moved out; or the El Tequila, which was located in the Twin Lakes Shopping Center. The owners of this property were involved in both facilities, and the action of the owners in regards to the lessees or the caters of this property is dismal to say the least. The reputation of the Latino Boom and the El Tequila are well known by the police, the news media, and the public. The actions and the patrons of both of these businesses have decreased the quality of life for the area. People avoid coming to 21st and Amidon because of it. It has hurt businesses in the area, and I know the police have attempted to get their drinking licenses revoked to no avail.

My neighborhood has a long history of dealing with fights, gun fights, with people getting killed, disorderly conduct, over consumption of alcohol, consumption of alcohol outside the building, which goes on at the Latino Boom, and I can testify to it. Excessively loud noise, trash, etc., are thrown around the neighborhood, damage to cars and properties as patrons cut through the neighborhood. A drinking establishment restaurant for this location could be acceptable if properly managed to obey the laws but this has not been the fact, and I strongly agree to deny this.

NICK BAUCH I used to live at 2126 Hood which is part of the North Riverside Neighborhood which is south of the river there directly south of what used to be Latino Boom. I have now moved to the west side of Wichita partially because of the noise of this club. I understand that it is a new tenant, and we have to let go of the past, and encourage these people to be successful in new businesses, and I am all for that but I really hope that you guys take into consideration the fact that this business wants to go until 2:00 a.m. on a Saturday night. I have a pretty high stress job, and I look forward to my weekends, and I don't want a nightclub booming and banging a 1/2 mile north of my property to where I don't get to sleep until 3:00 a.m. in the morning. I have no idea what plan these folks are going to have but I think even two nights a month to have a nightclub in a residential neighborhood is destructive to the peaceful tranquility of the Wichita, Kansas. I encourage your board not to allow any kind of activity like that in there.

JASON WELCH, 2303 Somerset, Wichita, KS I run Twin Rivers apartment across the street. I was a victim of a drive by shooting as a result of El Tequila and Latino Boom. I am a simple person, and for them to stand there and say that this club is going to do catering for the Vietnamese and yet have a Mexican name I will never understand. Since it was shutdown, we have had six car break-ins in the last year. When it was open it was six every weekend that it was open. Willy, the owner of El Tequila, sat in my office in front of me and said, "I am the owner of El Tequila and showed no remorse about the fact that there was a shooting there." He didn't seem to care and thought it was funny. He also mentioned that he was part owner of Jade Palace. I asked him what he could do for the security of my property. I have to worry about 230 apartments and the tenants there. The shooting happened December 7th of 2002; my son had just turned a year old.

KAPLAN Mr. Blasé said that it is the law because it is a letter from Mr. Schroeder. There is nothing in the Unified Zoning Code that is the law. That is Mr. Schroeder's interpretation, and that is his opinion. Now, they say I pay no respect to it, then why am I even here? I filed the CUP Amendment based on Mr. Schroeder's opinion that this constituted a night club. If it had not been for that opinion, and the issues for the cabaret and the DE-R are already issued, they are already valid licenses, and they can operate on the licenses. So the fact that I got the opinion letter is what mandated the CUP Amendment in the first place. It is the direct result of the Superintendents Interpretation.

Secondly, the applicant is the tenant. I don't know anything about Latino Boom or El Tequila or any of these other clubs. I do know that we operate in a system that you are only guilty when you are guilty, and what we have heard this afternoon is what happened prior to these applications. Not one individual, evidence, or piece of documentation is any indication of the character of this applicant. Not one word about this applicant. We are talking about other clubs in other locations. It is really not something legally that should be considered. I hope you decide this application and not the past.

GIBBS Are you representing the applicant or the owner?

KAPLAN The applicant is the tenant. I do not represent the owner. You have the application before you. Nuot Nguyen and Ly Nqoc Thi are the tenant and the applicants.

SHERMAN There was a mention of church, where is the church in relationship to this business.

MILLER (Shows the site).

BISHOP How did this come about? Explain how this was created? Is it because of defects in the DE-R license? What is the deal? How can you have what is a dance hall operating that close to a church, residential in all directions.

MILLER I don't issue the licenses.

BISHOP Isn't there a connection between the zoning use and those licenses?

MILLER Those licenses are issued by the Office of Central Inspection.

BISHOP You could have a DE-R license in a single-family residential home?

MILLER No, I would hope not.

DUNLAP I think we will have to let the Planning Department off the hook since they do not do the licensing but you are right that it does not fit the zoning.

BISHOP It makes good sense with a small commercial pocket like that to have the kind of business where people in that neighborhood might go and eat there. But such an establishment does not need to be open after 9:00-10:00 p.m. at night. It needs to be a place where people are primarily going to drink. I will be opposed to this application.

DUNLAP I don't think it is our position here to dictate the hours of operation to anybody. Maybe we can control the zoning and what happens there but that it is a business decision of theirs. I agree with you about this particular location.

BISHOP When you have that right across from residential homes, and you have cars coming and going and revving their engines at all times of the night that is a nuisance.

MOTION: To approve staff recommendation and deny this application.

GAROFALO moved, **BISHOP** seconded the motion, and it carried (11-0).

10. **Case No.: ZON2004-49** – William Fry; Shiloh Properties LLC, Bill/Glenda Shively (contract purchaser); John Tasset (agent) Request Zone change from "GO" General Office to "LC" Limited Commercial on property described as;

Lot 1, Caldwell's 2nd Addition, Wichita, Sedgwick County, Kansas. Generally located Southwest of Seneca and Patterson.

BACKGROUND: The applicant requests LC Limited Commercial zoning on a .736-acre vacant lot, currently zoned GO General Office, for a vehicle upholstery business to be housed in a new building. The application area is west of South Seneca and south of Patterson (3333 South Seneca). North of the application area, across Patterson, are two LC zoned auto-based uses, a GO zoned single-family residence, and an LC zoned shopping center. South and west of the application area are SF-5 zoned single-family residences. East of the application area, across Seneca, are SF-5 zoned single-family residences; and an SF-5 zoned, legal non-conforming auto repair business.

CASE HISTORY: Platted as lot 1 Caldwell's 2nd Addition. The property was rezoned to GO in the early 1980s (Z-2468).

ADJACENT ZONING AND LAND USE:

| | |
|---|---|
| NORTH: "LC" Limited Commercial | Auto repair, limited |
| SOUTH: "SF-5" Single-Family Residential | Single-family residential |
| EAST: "SF-5" Single-Family Residential | Single-family residential, auto repair, limited |
| WEST: "SF-5" Single-Family Residential | Single-family residential |

PUBLIC SERVICES: Current traffic counts on this segment of Seneca are 9,627 vehicles per day. Seneca is a 4-lane, section line arterial street at this location with an existing half width right of way (ROW) of 50 feet. The 2030 Transportation Plan indicates that this section of Seneca will increase to a 5-lane arterial. The 2002-2011 CIP indicates that this section of Seneca will be widened to 5 lanes, providing a central turn lane. Construction is to begin in 2006; the project is funded with general obligation bonds and federal funds totaling \$3.8 million. This widening project is currently in the design phase, and will fit within the existing ROW.

The application area currently has one access point from Seneca, approximately 75 feet south of Patterson. A proposed site plan for this case demonstrates the existing access point from Seneca, and a proposed access point from Patterson. The Access Management Policy recommends 200 feet between right-in-right-out access points, and 400 feet between full movement access points. The City of Wichita Traffic Engineer recommends dedication of access control on Seneca for this project, to minimize turning traffic conflicts and accidents.

All other normal public services are available at the site.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this parcel as appropriate for "office", reflecting the current zoning.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

The Unified Zoning Code (UZC) would require compatibility setbacks between non-residential and residential development, as well as a screening requirement from residential zoning and uses. Conformance with the Landscape Ordinance at this site will be required in order to develop on the site.

RECOMMENDATION: The site has remained undeveloped under the current GO zoning, which allows for certain commercial and office uses. The proposed LC zoning would allow a range of commercial uses not permitted under the current GO zoning. The Unified Zoning Code (UZC) classifies LC zoning as more intense than the current GO zoning. The proposed zone change is not in conformance with the Land Use Guide, but is in conformance with the recommended Commercial Locational guidelines of the Plan. Potential negative effects (on nearby residential neighbors) would not necessarily be worse under LC zoning than under the current GO zoning. Potential negative effects, from commercial uses at the site, on the residential neighbors to the south and west would be mitigated by existing codes. Existing codes would require compatibility setbacks, screening, landscaping, limit noise, and prohibit certain uses within 200 feet of residences.

LC uses at the application area would increase traffic on this section of Seneca. However, LC uses may not necessarily generate more traffic than that which would be generated under the current GO zoning. Conformance to the Access Management Policy regarding the spacing of openings along arterials would limit turning conflicts along Seneca.

One residential neighbor contacted MAPD with traffic concerns.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to dedication of complete access control along Seneca.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: This proposed zoning and land use is not out of character with nearby LC and GO zoning, and three nearby auto repair uses. The proposed zoning would be buffered and screened from abutting residential properties.
2. The suitability of the subject property for the uses to which it has been restricted: The property could be developed with various office or commercial uses as currently zoned. However, the site has remained undeveloped as zoned for well over 20 years.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Rezoning and commercial development could have negative effects on the single-family residences south and west of the application area. However, potential negative effects would not necessarily be worse under the proposed LC zoning than under the existing GO zoning. Existing codes would require compatibility setbacks, screening, landscaping, limit noise, and prohibit certain uses within 200 feet of residences.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "office" development, which is not in conformance with requested zoning. The proposed development is in accordance with the commercial locational guidelines of the plan. Dedication of access control would bring this proposal within the guidelines of the Access Management Policy.
5. Impact of the proposed development on community facilities: The proposed commercial development could increase traffic at this location on MacArthur. However, LC uses may not necessarily generate more traffic than that which would be generated under the current GO zoning. A widening project in process will handle additional traffic on Seneca. Access control dedication, as recommended by the City of Wichita Traffic Engineer will minimize traffic conflicts and accidents.

JESS MCNEELY Planning staff presented the staff report and slides. On October 6, 2004, the DAB 4 heard this application and no one spoke in opposition. The applicant would like to retain the access off of Seneca. DAB 4 voted to approve without requiring dedication of access control.

MITCHELL They approved to retain both accesses?

MCNEELY Yes.

GAROFALO How current is the aerial?

MCNEELY This is a very current aerial. The site is undeveloped and has quite a number of trees on it.

GAROFALO To south there is that a residence?

MCNEELY Yes, that is a large lot residence right there.

GAROFALO So it is residential to the west, and residential to the east, and to the south?

MCNEELY Yes.

GAROFALO Is that a vacant lot there, just immediately south of the application area.

MCNEELY No, the site immediately south of the application area is developed with single-family residence.

GAROFALO That is the large lot, the entire lot.

JOHN TASSETT, AGENT FOR THE OWNER OF THE PROPERTY AND THE CONTRACT PURCHASER There is only one item in this zoning request that we want to add, and that is of course the requirement that staff is requesting to close the access from Seneca. The policy is that 400-foot policy; simply can't apply in these older areas. There is only 265 feet in the whole block. So you are going to have a complete full block that has no access at all. The concept of the right-in and the right-out that they have tried to require in this application simply doesn't work. People will simply not pay attention to it. Planning has already indicated that Seneca is and will be expanded to five lanes with a center turn lane so it belies the necessity of making or denying an access into this property off of Seneca. What is the object of having the requirement? This business does not generate that much traffic, maybe one-two an hour at best, so it shouldn't have any impact on the traffic at all. Some of the neighborhood members last night at DAB pointed out that Patterson is already highly affected by the adjacent Allied Battery on the north that has a loading dock opening onto Patterson. Which is in itself affecting the access into Patterson, and will probably greatly affect the traffic flow.

The business along a major street and address on that street are very dependent on having that street open with an access on that street, and not on a side street that gets them into the property. So they really depend on having ready access.

JOHNSON Would you be opposed if the access be moved toward the south property line and then let the neighbor to the south access that same approach?

TASSETT It serves no benefit. What is he going to do? It is going to such a nature that we don't know what is going to happen in there, right now it is a residential zone. We would much rather leave the trees in place and kept the screening up, which we are going to have to put in anyhow.

GAROFALO Give us some indication of what kind of a structure building will be put up?

TASSETT A metal building.

JOHNSON Frank, what is that question based on?

TASSETT I believe it is the same as the Allied Battery across the street.

GAROFALO Because of the immediate residential area right across the street.

GLENDA SHIVELY My husband and I are the ones to actually build the building. We have had an upholstery shop in the city for 25 years. The DAB approved the request and let us keep the grand-fathered drive-way access from Seneca, there is one there now. We would not be asking the city to put in a new drive; we would just ask to retain that one. For a couple of purposes and one of the reasons is that the DAB approved it is because of the Patterson Street they do park 18-wheelers there at the battery place for hours at a time.

My concern for traffic would be that the city has assigned us a Seneca facing address, if we have that in the phone book and people are driving down Seneca looking for a Seneca address my concern would be that they would be trying to find the place and go right by it. As a merchant, if you look at that block there, if they are going to that northeast corner and they miss it, it will be a long journey through that neighborhood to try and get back around there. There is not a good way to access that once you miss that. We have also visited with that south adjacent homeowner, and he has no opposition to us putting it in. He came to our office, looked at our site plan, and we talked about leaving the trees, about the appropriate fence screening, and the traffic count, and he, as the largest adjacent landowner, doesn't have any problem with it at all.

This will be our life savings, and if we are not able to have or pickup any of that drive-by traffic that would go down Seneca, and be able to turn in on a whim it probably wouldn't be feasible for us to do that if we can't pick up a few of those. Our traffic count is typically two an hour, and maybe as much as ten on the lunch hour. We have three employees. It is not a huge traffic concern.

DOWNING You currently have an upholstery shop some place else in the City?

SHIVELY Yes, we do.

DOWNING What percentage of your business is drive-by and what percentage is destination?

SHIVELY Being a specialty shop it is about 50/50 because a lot of people that do come in as destination say I saw you when I was driving by the other day and so day I stopped.

JOHNSON Jess, do you know how wide Patterson Street is?

MCNEELY I am not sure.

JOHNSON I drove over to this site and it seems like that street is very narrow.

MCNEELY It is narrow.

JOHNSON I would wonder if a Traffic Engineer would want that more much more traffic going done that street versus letting them come in off Seneca.

MOTION: I move to approve the zone change without the dedication of complete access control on Seneca.

HENTZEN moved, **BISHOP** seconded the motion, and it carried (10-0).

11. **Case No.: CON2004-31** – Christopher & Charlotte Wilken Request Sedgwick County Conditional Use to permit an accessory apartment on property zoned "RR" Rural Residential on property described as;

Lot 6, Block B, Aqueous Acres Addition. Generally located at the southwest corner of 76th Street South and Hoover Road.

BACKGROUND: The applicants are requesting a "Conditional Use" to allow an accessory apartment on Lot 6, Block B, Aqueous Acres, 5601 West 76th Street South. One of the applicants' mothers will live in the accessory apartment. The 7.40-acre subject site is a corner lot located on the west side of Hoover Road and the south side of 76th Street South. The property is zoned "RR" Rural Residential. Because the proposed additional structure will contain a kitchen and sleeping quarters, it is classified as dwelling unit and thus requires "Conditional Use" approval for an accessory apartment. The site is in Sedgwick County and within the City of Haysville's area of zoning influence. The applicant has provided a site plan.

The site plan submitted by the applicant shows the apartment sitting behind the primary residence on the north side of the site, towards 76th Street South. The site plan shows the primary residence, the apartment with a proposed garage, an existing detached garage, a shed and the lagoon to be behind platted 35-foot setbacks and 25-foot drainage and utility easements on its east and north sides. It also shows all structures and the sewage lagoon to be outside a large floodway easement on the site's south and west sides. The apartment shares the same drive onto 76th Street South as the primary residence. 76th Street South provides access for the site onto Hoover Road.

The applicant's current residence is a one-story, stick frame, lap siding and half-brick front 1,348-square foot structure with an attached two-car garage. The applicant also has a stick framed, lap siding, 1,200-square foot detached two-car garage behind the single-family residence. The proposed accessory apartment is shown as approximately 1,140-square feet in size, with what appears to be an attached 672-square foot one-car garage. The applicant has stated that the materials used on the proposed apartment will be some type of lap siding and that the apartment will be a one-story structure.

The subject site is located in the partially developed Aqueous Acres addition, which consists of 12 lots, ranging in size from approximately 5-acres to 10-acres, with most of lots being between 5-5 ½-acres in size. The existing single-family residences in the subdivision have been built from 1999 through 2001. The applicants' residence was built in 1999. There are single-family residences abutting the site's west and south sides and another two single-family residences north of the site across 76th Street South. The subdivision the site is located in is consistent with the general character and development of the area, which are large tract/lot single-family residences along both sides of Hoover Road. There are agricultural fields on the east of the site across Hoover Road. The area between 71st Street South and 79th Street South, along Hoover Road appears more suburban than rural. The site is approximately 2-miles west of the city of Haysville and is outside its growth area.

As per the Unified Zoning Code, the "Conditional Use" requirements for accessory apartments stipulate the following:

- (a) a maximum of one accessory apartment may be allowed on the same lot as a single-family dwelling;
- (b) the appearance of an accessory apartment shall be compatible with the main dwelling and with the character of the neighborhood;
- (c) the accessory apartment shall remain accessory to and under the same ownership as the principal single-family dwelling, including that it shall not be subdivided or sold as a condominium; and
- (d) the water and sewer service provided to the accessory structure shall not be provided as separate service from the main dwelling.

CASE HISTORY: The property is part of the Aqueous Acres addition, which was recorded with the Register of Deeds August 13, 1990. The Haysville Planning Commission considered this request at their September 23, 2004 meeting and recommended approval unanimously.

ADJACENT ZONING AND LAND USE:

| | |
|-------------------------------|--|
| NORTH: "RR" Rural Residential | Large lot single-family residences |
| SOUTH: "RR" Rural Residential | Large lot/tract single-family residences |
| EAST: "RR" Rural Residential | Agricultural |
| WEST: "RR" Rural Residential | Large lot single-family residences |

PUBLIC SERVICES: Hoover Road is an unimproved Ohio township road. The 2030 Transportation Plan projects no change in its status. 76th Street South is a sand and gravel residential road. The site has access to public water from the City of Clearwater and is outside any rural water districts; the site has a well. The site has lagoon; there currently is no access to public sewer.

CONFORMANCE TO PLANS/POLICIES: The 2001 Sedgwick County Development Guide Land Use Guide of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* designates this area as "Rural". The Rural category is intended to accommodate agricultural uses, rural based uses that are no more offensive than normal agricultural uses, and large lot residential subdivisions with provisions for future water and sewer services. The policies of the Unified Zoning Code allow one accessory apartment to be associated with a principle dwelling as a "Conditional Use" if the proposed use is compatible with the principle dwelling, is in character with the surrounding residential development, is accessory to the main structure, remains in a single ownership, and obtains water and sewer service from the main dwelling hook-up.

RECOMMENDATION: Based upon information available prior to the public hearing, Staff recommends that the request be APPROVED subject to the following conditions being completed within a year:

- 1. The accessory apartment shall be subject to all requirements of Section III-D.6.a of the Unified Zoning Code; including appearance of the accessory apartment shall be compatible with the primary residence.
- 2. The applicant shall obtain all applicable permits, including but not limited to building, health, and zoning.
- 3. Dedicate 10-foot of right-of-way along Hoover.
- 4. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VII hereof, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: The area's character is large tract/lot single-family residential, with adjacent agricultural land. The area appears more suburban than rural. The site sits in a partially developed large lot single-family residential subdivision, with the existing houses having been built from 1999 through 2001. The existing houses are

single story with wood frame, partial brick with some type of composite or wood lap siding or just siding. There is a log home in the area. There are outbuildings on many of the tracts/lots, along with the residential structures, including barns or sheds for horses. The applicant's accessory apartment would be the first in the subdivision and in the immediate area.

2. The suitability of the subject property for the uses to which it has been restricted: Accessory apartments are allowed as a "Conditional Use" in "RR" zoning provided the applicant and the site meet the specified criteria. The application and the site appear to meet these criteria.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental effect should be minimized by the conditions for accessory apartments by the UZC and the conditional use.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Unified Zoning Code makes specific provision for accessory apartments in "RR" zoning. This application appears to comply with all the provisions outlined in the UZC for accessory apartments.
5. Impact of the proposed development on community facilities: The applicants' request should have a minimal impact on community facilities; there is no public water or sewer available at this time. The site is outside any rural water district.

BILL LONGNECKER Planning staff presented the staff report.

GAROFALO What is the purpose for the 10-foot dedication?

LONGNECKER Per the Subdivision Regulations, when we do have a zoning change or a Conditional Use we typically do ask for right-of-way if we do not have the right-of-way that meets the current standard. Currently, we have 50 feet of half street right-of-way at this point. Hoover Road is considered a section line road, and half street right-of-way for section line road per the current standard is 60 feet. At this point, we have not received protest on this application.

MOTION: To approve the Conditional Use subject to staff recommendations.

DOWNING moved, **JOHNSON** seconded the motion.

SUBSTITUTE MOTION: To approve the Conditional Use application subject to staff recommendations removing Condition #3, which is the Dedication of 10-feet or right-of-way along Hoover.

DUNLAP moved, **WARNER** seconded the motion and it carried (9-1) **BISHOP** opposed.

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12. Case No.: CON2004-34 – Wichita Independent Business Association (owner/applicant); Baughman Company, P.A. c/o Terry Smythe (agent) Request Conditional Use to allow ancillary parking in "B" Multi-family zoning on property described as;

That part of Lot 2, Emerson Addition, Wichita, Sedgwick County, Kansas described as follows: beginning at the northeast corner of said Lot 2; thence west along the north line of said Lot 2, 108 feet for a point of beginning; thence south 279 feet, thence west 48 feet; thence northerly 276 feet to a point on the north line of said Lot 2, said point being on a curve; thence easterly 60 feet along said curve to the point of beginning. Generally located At the southwest corner of Central and Waco.

BACKGROUND: The applicant requests a Conditional Use to allow ancillary parking on 0.4 platted acres zoned "B" Multi-Family. The subject property is located south of Central and west of Waco. The ancillary parking is needed for an adjoining proposed office building to be located east of the proposed ancillary parking area (see attached site plan). The subject property is currently developed with a parking lot that was constructed at a time when parking was permitted by right in the "B" district. Since the parking lot will be reconstructed, it must conform with current zoning regulations, which require approval of a Conditional Use. Ancillary parking areas are subject to the Supplementary Use Regulations contained in Section III-D.6.p. (see attached).

The site plan does not show any screening or landscaping along the west and south property lines where the proposed parking lot would abut residentially-zoned property; however, Section III-D.6.p.(6) of the Unified Zoning Code requires screening and landscaping in these locations. Supplementary Use Regulations such as Section III-D.6.p. can be waived by the City Council upon receiving a favorable recommendation from the MAPC. Planning staff recommends waiving the requirements of Section III-D.6.p.

The surrounding area is characterized primarily by institutional and multi-family uses. The property to the east is zoned "GC" General Commercial, is currently developed with a parking lot, and is the proposed location of the office building to be supported by the requested ancillary parking lot. The property to the south is zoned "GC" General Commercial and is developed with a day care. The property to the west is zoned "B" Multi-Family and is undeveloped. The property to the north is zoned "B" Multi-Family is developed with apartments.

CASE HISTORY: The subject property is platted as part of the Emerson Addition, which was recorded May 12, 1980.

ADJACENT ZONING AND LAND USE:

| | |
|-------------|-------------|
| NORTH: "B" | Apartments |
| SOUTH: "GC" | Day care |
| EAST: "GC" | Parking lot |
| WEST: "B" | Undeveloped |

PUBLIC SERVICES: Normal municipal services are available. Transportation access is via Waco, a four-lane arterial street.

CONFORMANCE TO PLANS/POLICIES: The Land Use Plan of the Development Plan for Downtown Wichita does not specifically address the preferred future use of the subject property but indicates offices are encouraged to be located in the area. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The request conforms with the Land Use Plan of the Development Plan for Downtown Wichita and the Commercial Locational Guidelines.

RECOMMENDATION: Based on the information available prior to the public hearing, staff recommends that the request be APPROVED, subject to the following conditions:

1. The ancillary parking area shall be developed in general conformance with the approved site plan.
2. The ancillary parking area shall be developed in conformance with the requirements of Section III-D.6.p. of the Unified Zoning Code, except that the requirements of Section III-D.6.p.(6) are hereby waived.
3. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized primarily by institutional and multi-family uses. The surrounding zoning is "GC" General Commercial and "B" Multi-Family. Parking areas for offices uses are commonly found in such areas; therefore, the ancillary parking lot is consistent with the zoning, uses, and character of the area.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property had been developed as a parking lot under previous zoning regulations that permitted parking by right in "B" district. Continued use of the subject property as a parking lot through approval of a Conditional Use seems to be the most suitable use of the property.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The existing parking lot has had no apparent detrimental affects on nearby properties; therefore, the proposed new ancillary parking lot also should not detrimentally affect nearby properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Land Use Plan of the Development Plan for Downtown Wichita does not specifically address the preferred future use of the subject property but indicates offices are encouraged to be located in the area. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The request conforms with the Land Use Plan of the Development Plan for Downtown Wichita and the Commercial Locational Guidelines.

MOTION: Approve, subject to staff recommendations.

HENTZEN moved, **MITCHELL** seconded the motion, and it carried (9-0-2)
JOHNSON and **DUNLAP** abstain.

-
13. **Case No.: ZON2004-50** – Delbert W. and Rebecca Hannamen (owner); Nancy Jo Combs (agent) Request Zone change from "SF-5" Single-family Residential to "NO" Neighborhood Office on property described as;

A tract in the Southeast Quarter of the Northwest Quarter of Section 31, Township 26, South, Range 1 East of the 6th P.M., Sedgwick County, Kansas lying Northeasterly of K-96 Highway and Southeasterly of the Floodway taken by Condemnation Case A-39338, except that part platted as North Amidon Medical Center Addition and except that part taken for road. Generally located West of Amidon and 34th Street North.

BACKGROUND: The applicant requests a zone change from "SF-5" Single-family to "NO" Neighborhood Office on property located one lot north of the junction of Womer and North Amidon, which subsequently becomes 34th Street North when the street turns to the northeast. The applicant has indicated the desire to convert an existing residence to general office use for a small CPA office. The office would operate on the scale of a typical home occupation as allowed in residential zoning districts of greater intensity of "SF-5" except that nobody would be living in the residence.

According to the information submitted by the applicant, the applicant intends to remodel the interior of the structure, and to add parking/drive aisles as necessary to meet Unified Zoning Code requirements. The parking lot would be located on the lot and landscaped to screen it from view of the residences across Amidon. (See attached statement from applicant).

The property is located north of a medical office building zoned "GO" General Office. The property to the southwest across Womer is zoned "LC" Limited Commercial and is vacant except for a cell tower on the west edge of the tract. The property to the east and northeast is zoned "SF-5" Single-family Residential and developed with single-family residences. The Wichita-Valley Center Flood Control Project (the Big Ditch) lies to the north/northwest.

CASE HISTORY: The property is unplatted.

ADJACENT ZONING AND LAND USE:

| | |
|----------------|---|
| NORTH: Unzoned | Wichita-Sedgwick County Flood Control Project |
| SOUTH: "GO" | Medical office |
| EAST: "SF-5" | Single-family residences |
| WEST: "LC" | Vacant, cell tower |

PUBLIC SERVICES: The property is located on the east side of Womer, a principal arterial that diverges in a northwesterly direction from Amidon a block north of 33rd Street North. Womer continues across the Big Ditch and flows into Meridian. The property also has frontage on the west side of the continuation of Amidon, which becomes a residential street north of its divergence from Womer. Amidon is unpaved, and only a half-width right-of-way has been dedicated from the plat to the east of this tract.

Traffic counts on Womer were 12,544 cars per day (ADT) in 2002 and projected to increase to 14,473 in 2030. No access currently exists on Womer, and the position of the tract on the reverse curve along Womer, compounded by the rising grade to the top of an incline north of the subject property, makes direct access to Womer a traffic hazard.

Public water and sewer services are available, but the site is currently on a septic system.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies the subject tract as "low-density residential", which is in conflict with "NO" zoning. However, the adjacent property to the south is identified as "office."

The Commercial location guidelines contained in the 2002 update of the *Wichita-Sedgwick County Comprehensive Plan* include (1) being located adjacent to arterial streets; (2) local, service-oriented offices being incorporated within or adjacent to neighborhood and community scale commercial development, and (3) having low-density office use as a transitional land use between residential uses and higher intensity uses. If coupled with a protective overlay to keep the property residential in appearance and low intensity in use, the proposed zoning conforms to these guidelines except with respect to access via a local residential street. This guideline could also be realized by cross-lot access and use of the drive to the south as the main point of access.

RECOMMENDATION: The suggested protective overlay would allow conversion of the structure to a small-scale office use that operates similar to a home occupation except that residential occupancy would not be required and the addition of a parking area would be allowed. This is the lowest possible intensity of commercial use. It would be expected to have limited impact except for perhaps a small increase in traffic on the residential street. It would serve as a transitional use to buffer the residential neighborhood to the east from the traffic on Womer. Based on these considerations and upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within one year and subject to the following.

- A. APPROVE the zone change to "NO" Neighborhood Office subject to a Protective Overlay #148 with the following provisions:
1. The office use shall be conducted within the premises of the current structure but shall have those improvements such as but not limited to parking and drive aisles and landscaping to comply with the Unified Zoning Code site development regulations. Additionally, the parking lot shall be located and landscaped to screen it from view of the residential zoning east of Amidon.
 2. No more than eight individuals (including related family members) shall be allowed to work from the premises at any one time.
 3. No direct access shall be allowed onto Womer.
 4. The property owner shall grant a cross-lot easement in favor of the property to the south and seek to obtain an easement from the property to the south to serve as the main point of access to the subject property.
 5. The property owner shall execute an agreement with the City not to protest paving of Amidon.
 6. The property owner shall execute a guarantee for extension of sewer to the property.
 7. Light poles, including base and fixtures, shall not exceed 14 feet in height and shall be shielded to prevent spillage to the northeast and east.
 8. No signage on Amidon shall be permitted larger than two square feet; provided that it shall not be illuminated and shall be mounted flat against the façade of the building. Ground signage on Womer shall be limited to 10 feet in height.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The property is located north of a medical office building zoned "GO" General Office. The property to the southwest across Womer is zoned "LC" Limited Commercial and is vacant except for a cell tower on the west edge of the tract. The property to the east and northeast is zoned "SF-5" Single-family Residential and developed with single-family residences. The Wichita-Valley Center Flood Control Project (the Big Ditch) lies to the north/northwest.
2. The suitability of the subject property for the uses to which it has been restricted: The property could continue to be used as a single-family residence. Its proximity to the office to the south and location along Womer somewhat reduce the attractiveness of residential use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The protective overlay provisions would mitigate most impacts associated with nonresidential use. The main impact would be a potential increase in traffic on an unpaved street.

4. The length of time the subject property has remained vacant as zoned: According to the agent, the structure had been on the market for over six months as currently zoned prior to purchase by the applicant.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies the subject tract as "low-density residential", which is in conflict with "NO" zoning. However, the adjacent property to the south is identified as "office." The Commercial location guidelines contained in the 2002 update of the *Wichita-Sedgwick County Comprehensive Plan* include (1) being located adjacent to arterial streets; (2) local, service-oriented offices being incorporated within or adjacent to neighborhood and community scale commercial development, and (3) having low-density office use as a transitional land use between residential uses and higher intensity uses. If coupled with a protective overlay to keep the property residential in appearance and low intensity in use, the proposed zoning conforms to these guidelines except with respect to access via a local residential street. This guideline could also be realized by cross-lot access and use of the drive to the south as the main point of access.
6. Impact of the proposed development on community facilities: The main impact is that traffic might increase. A typical level of traffic generated by a single-family dwelling is approximately 10 cars/day. The site is 1.2 acres in size, certainly large enough to be subdivided into at least one additional dwelling, which would generate approximately 20 cars per day. Typically, 2,000 square feet of office would be expected to generate 40 cars per day (20 vehicles/1,000 square feet of gross floor area). According to the applicant, it would generate perhaps 10-20 cars per day (4-5 employees, plus 3-5 clients per day). If the use operates within these limitations, it should not exert a significant impact on the unpaved road, but if the traffic counts rise beyond the level expected from residential use, it would increase pressure to pave the street.

DONNA GOLTRY Planning staff presented the staff report.

SHERMAN When you come off of Womer and go into Amidon, and the doctor's office is sitting here, they come in off of Womer?

GOLTRY They come in off Womer.

SHERMAN How could you have cross-lot access the way this is positioned? Because the doctor's office is sitting east and west, is it not?

GOLTRY Actually you still have a grade problem. Their parking lot is right on the other side of the doctor's office, and it connects to the drive here and in the front of the building; that would be the place. We did initially look at the possibility of cross-lot access. With the cross-lot access you would be losing grade, and it would be a steep grade- about 10 percent.

SHERMAN How would that look?

GOLTRY Obviously not too good because the doctor to the south is not willing to grant it.

SHERMAN I know. He put a lot of work in that property.

GOLTRY I think, in this case, this is why staff recommendation is--let's get the cross-lot access as a possibility on the northern lot at this point, and seek to get it on the southern lot in the future. But, if you can't get it at this time, maybe things will change in the future. You need to hold out your option for cross-lot access in case things are redeveloped a way in the future where it could work.

HENTZEN Do you really think that since the present doctor there says "no" that you want to force these people to sign a cross-lot access?

GOLTRY That would be the way to proceed, because that way you have it in place for the northern lot.

HENTZEN There is not that much territory up there to develop. You don't need a cross-lot access.

GOLTRY Well, you could get access directly off it, and then you wouldn't have to the access off the residential street.

SHERMAN Where? How?

GOLTRY Through the parking lot.

SHERMAN The portion that is on the west side of his building.

GOLTRY Yes.

SHERMAN There are like three or four stalls over here and then there is...

GOLTRY The parking lot ends in kind of a hammer head turnaround. And, if it was simply extended, it would provide direct access to the front of their building.

DEL HANNAMEN I am the CPA and my wife Rebecca is the Office Manager. We tried to relieve some of the concerns to the neighborhood by letter, and phone conversations. The initial concerns were about whether we were going to put up commercial signage, and where the parking lot was going to be, and the increased traffic, and office access for our property devaluing the property across the street. The property is located alongside another office, as you have seen. The doctor said that he was concerned about the liability about having non-patients driving through his parking lot. And the second concern was that he has a lot of older clients, and he said they get confused, and they might follow one of our people into our parking lot, and then, how do they

get out of there? He was also concerned about once he granted it that it would be on the property forever and the future was scary to him as well.

REBECCA HANNAMEN Also in his letter he said that he would not grant the cross lot access but that he was in favor of our business opening.

DEL HANNAMEN The discussion on the traffic increase was our word against our opposition, we tried to very fairly say that the street has had the luxury of having one single elderly woman living on this property for a number years. The chances that a single person were to buy this property, if we were to resale it, and keep it residential is very slight because it is on a concrete slab and it has three bedrooms on one end of the house and another bedroom by the front door and it is 1.2 acres. I think there is going to be an increase in traffic regardless.

SHERMAN What type of business do you have, again?

DEL HANNAMEN It will be an accounting CPA business.

SHERMAN How many clients is that?

DEL HANNAMEN I have 250 personal tax returns.

SHERMAN I am concerned about the traffic on Amidon. You are not going to have a lot of people coming in and out of your place are you?

DEL HANNAMEN We estimated 3-5 clients a day on an average.

SHERMAN Was that a gravel road?

DEL HANNAMEN That is the issue.

MITCHELL What type of paving begins at the end of the curve that is just east of you, isn't that just asphalt?

DEL HANNAMEN It is concrete, cement.

DALE WHEELER, 3446 N. AMIDON, Wichita, KS 67204 I am here representing the five homeowners who live on this dirt section of the road. My house is directly across the street from the subject property. On Womer Street that goes up high, there is a large berm on the backside of the doctor's house and the subject property is located in a valley. And, unless you are looking for that house, you are not going to see it. So that puts the emphasis on Amidon. This will increase traffic on Amidon. I have a petitions opposing the zone change. Most of my reasons are the access to the subject property is from Amidon. The entire block providing access to the subject property is a dirt road, and we don't want increased taxes.

At the DAB meeting the applicants have tried to give the impression that the property was vacant and this is not the case. The same lady that lived there 30 years, and raised a family there did not move out until the contract was signed, and the stipulation that the house would not be rezoned. They also have indicated that the house was in dire need of repair. They purchased the housing knowing the house was in a residential area.

According to the staff report, the Land Use Guide identifies the tract as low-density residential, which is in conflict with the "NO" zone. It is also not in conformance with the Comprehensive Plan. My neighbors and I urge you to consider our right to live in a peaceful and quite neighborhood as it has been and should remain.

MITCHELL Would you still object if the street was paved?

WHEELER Yes.

HENTZEN How long has that doctor been in there? What is his property zoned?

WHEELER I would estimate 10-11 years.

GOLTRY The zoning for the doctor's office is "GO" General Office.

PHILLIP BROWN 3424 N. Amidon We bought our house in 1991. It is a nice area, but the doctors' office is on Womer. If they do decide to pave Amidon, they will take what little bit of front yard we have anyway. If they don't, it is going to be just a dust cloud for years to come. What would happen if in 4-5 years that it is down in too far of a hole and would sell it to someone else, and it is zoned "NO"? Then what would we expect to get after that?

DUNLAP On a home occupation business how many employees can come and go a day without it being rezoned from residential?

GOLTRY Depends on the zoning classification. For "SF-5" you can't have any outside employees, for "TF-3" you can have one outside employee, and for "RR" you can have up to four.

DUNLAP This is not rural?

GOLTRY No this is "SF-5". This was an attempt to blend together home occupation attributes with low intensity zoning in an area that has an access problem.

DUNLAP I was just going to see if we could do it without changing the zoning.

GOLTRY No, you have to live in it and you can't have any outside employees in "SF-5".

SHERMAN This is really bothering me, because I am always encouraging small businesses to do whatever they need to do to get started. So I appreciate this couple wanting to get their business going in this particular location. Because it is so difficult, you have this street that goes up and you are asking the doctor to take access, which there is very little room to do anything between those two areas, and then you have this dirt road. I am perplexed how this would work under any circumstance. Even if you pave that street, coming around that corner of their building it cannot be seen from Womer. And this is not a generally commercial area. I have a problem with this project.

WARNER This type of business is not the type of business that they are going to drive by and look for a sign and stop. He has a clientele that he has probably had for years, and they don't know where they are going before they go there. So they are not going to be looking at a sign and trying to find Amidon. They are going to know where they are going if they need to get there in the first place. It looks to me like the subdivision on the north and to the east; do they enter on Amidon to get access to that? It looks like you have traffic already using the dirt road.

REBECCA HANNAMEN We are a small 250, client accounting firm. With the new technology everything comes by computer or fax and our traffic level would not create more traffic. It is hard to address opposition when you are neighbors, and you don't want be offensive, and you are addressing fears rather than facts. Since we took position of the property on the 28th, we have never signed a contract with the contingency. We looked at the house and offered her the full price. We bought it, and she had it on the market for 6 months. These people who are expressing opposition, they have had one single lady there, but after she moved out it might start generating traffic again. And, we are proposing the lot requires it could generate. The property character has changed over the years. When you are in this house, you don't feel a part of the neighborhood. The sound from Womer, because it goes down a little bit, it is an uphill grade, it changes to 45 mph, the traffic sound is very loud. You walk out your front door and there is a doctors' office parking lot.

It was stated that there are five signatures in opposition. I did phone and visit with two of those people last night. One of them, Mr. Massey, very plainly said, because we have sent out two letters, and we have tried to communicate with the neighborhood anyway, he said that he signed a piece of paper, and he said he had no idea what he signed. He is 80 years old and his wife died three years ago, and he said he didn't care what happened across the street. Then the lady on the corner, Evelyn Biggs, who initially when our first letter went out, she called right off and said it was fine with her. But then last night, she said someone came to her and told her there was going to be a big parking lot and lots of commercial signage.

DUNLAP These communications that you made with the neighborhood, were they prior to you purchasing the property or after you purchased the property?

DEL HANNAMEN The first one we sent out on a Friday and the following Wednesday we signed the contract after we had two positive phone calls. That following Friday, we got the letter from Mr. Wheeler, and we had already signed the purchase contract. And we, then we had a problem with the title descriptions, and we closed a week ago Wednesday.

DUNLAP You bought the property knowing that it was residential and knowing that you could not run a business there, and assuming you could get the zoning changed?

REBECCA HANNAMEN We did have our meeting here at City Hall and after that meeting, and after everything they told us could go wrong, yes, you are correct, we wrote a contract on the house simply because we did feel it was the absolutely perfect location for an office. And we did feel we would be good for the neighborhood. The lady selling the house was ready to move in with her sister.

MOTION: To approve the zone change without the cross-lot easement in Item 4.

MITCHELL moved, **WARREN** seconded the motion.

BISHOP I am going to oppose the motion. However, I believe without having the access to Womer, it is going to put some stress on that neighborhood for business traffic and the neighborhood office will run with the land. So if they have to sell it, who knows how much traffic the next business will generate.

DUNLAP I would have probably supported this with the cross-lot application. Even though I know the doctor won't allow it right now it might happen someday.

SUBSTITUTE MOTION: To approve the zone change per staff comments and conditions.

JOHNSON moved, **DOWNING** seconded the motion, and it carried 6-4.
(**MITCHELL, HENTZEN, SHERMAN, DUNLAP** opposed.)

14. **Case No.: CON2004-32** – Quik Sand, Inc. (contract purchaser), Glaves Family Farms, L.L.C.; Chuck Hill, Jack Glaves (agents) Request Sedgwick County Conditional Use for sand extraction on property described as;

The Southwest Quarter of Section 34, Township 25 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas except the west 800 feet of the south 545 feet thereof. Generally located Northeast of Ridge Road and 77th Street North.

BACKGROUND: The applicant is seeking a Conditional Use to permit sand extraction or mining on 146.4 acres of farmland located north of 77th Street North and east of Ridge Road (71st Street West). The property is zoned RR Rural Residential and is unplatted.

The applicant proposes to excavate a 108-acre lake in order to access the sand and gravel located on the site. The applicant is in the construction business and requires a reliable supply of sand. The sand plant and material stockpile area would be located in the northwest corner of the site. Access to the site would be to Ridge Road from the northwest corner of the application area. Proposed setbacks from the property line to the excavation vary from 50 feet to 250 feet.

The applicant's redevelopment plan depicts 28 single-family residential lots along the south and west side of the site once excavation has stopped.

Surrounding properties are zoned RR Rural Residential. The land to the north is farmland. A private road (63rd Street) is located just east of the application area that provides access to a number of homes located east of the road. There are two existing homes located immediately southwest of the application area. Two other homes are located south of 77th Street. The remainder of land to the south is farmland. Property to the west is farmland, while the property to the northwest has been divided into a series of smaller lots fronting the west side of Ridge Road.

CASE HISTORY: None

ADJACENT ZONING AND LAND USE:

NORTH: RR Rural Residential; farm ground
SOUTH: RR Rural Residential; single-family residences, farm ground
EAST: RR Rural Residential; single-family residences
WEST: RR Rural Residential;

PUBLIC SERVICES: Ridge Road is a paved two-lane county road while 77th Street is sand and gravel. No public sewer or water services are available.

CONFORMANCE TO PLANS/POLICIES: The Sedgwick County Development Guide depicts this site as appropriate for rural uses, and contains policies that look favorably on uses in rural areas that are resource based.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The extraction operation on the site shall proceed in accordance with the approved site plan, and be subject to the supplementary use regulations found in the Unified Zoning Code at Article III, Section III-D, gg (pp.147-149, attached).
2. The Conditional Use for sand extraction shall be valid for 10 years following the date of final action (either MAPC or County Commission) approving extraction operations. The applicant may apply for an administrative adjustment for an additional two years should extraction operations not be completed at the end of the initial five year time period.
3. If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: All surrounding property is zoned RR Rural Residential. There is a mix of large-lot single-family homes, farmsteads and farmland adjacent to the site. The character of the neighborhood is rural.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned RR Rural Residential and is cropland. The site could continue to be used for farmland or any of the uses permitted by right in the RR district. However, sand extraction is a resource based activity requiring the activity to occur where the sand is located.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Blowing dust, increased truck traffic and noise are probably the most obvious concerns associated with this type of request. The site's design, access to a paved county road and the conditions of approval will minimize detrimental impacts. When the mining is completed the resulting water feature may be seen as a positive element since many new residential developments go to extra lengths to create water features.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval of the request will provide additional sand resources for the construction industry, including the applicant's construction related businesses, and other consumers of sand. Sand is a vital component of many building materials and building processes used in public and private construction projects. Approval will provide the applicant and other consumers of sand with a source of sand. Denial could increase the applicant's cost of doing business if he had to buy sand from another source or find another location further out.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Sedgwick County Development Guide depicts this site as appropriate for rural uses, and contains policies that look favorably on uses in rural areas that are resource based.
6. Impact of the proposed development on community facilities: Increased truck traffic will occur on ridge Road, however existing facilities are in place to address the increase.

GAROFALO On Condition number two It says "valid for 10 years" and then it says and then the last sentence says five year time period.

MILLER That is an error. It should be 10 years.

CHUCK HILL, representing the applicant, Quick Sand Inc. We selected this site because there are certain requirements that you have to have for a sand extraction facility. You have to have a location that has adequate amounts of quality sand deposits as determined from ground tests. We have found that on this property. The next thing you have to have is water appropriation rights to cover what the State has in the net evaporation loss from the lake. Water rights are in high demand and in short supply. This property has an available irrigation well that can be converted to industrial use, and when they apply the conversion formula we get an 80 acre lake as opposed to the 108 acre lake maximum that we could have developed given the setback requirements of the Zoning Code, and the post-development plan. The other thing that we need is access to the primary market. Our primary market is Wichita. Quick Sand's number one customer is Cornejo and Sons located in south Wichita, the traffic will go down Ridge Road to K-96 or I-235 for delivery.

We have no objections to the conditions in the staff report. The complaints of the neighbors that we heard at the Valley Center Planning Commission generally can be characterized as the following: dust or blowing sand. We are required to control dust, and we will do that with the watering of the interior access roads. As far as the stockpiles are concerned, the sand that comes out of a sand plant is wet, it gets mixed with water and those piles remain wet for a period of time, and we have not experienced significant problems with sand blowing off of stockpiles. We couldn't afford to have half of our inventory blow away. The other complaints were noise, and we are going to have mufflers on all of our equipment.

There was a significant concern by the neighbors about the traffic on Ridge Road, and I would remind you that it is a designated arterial and it is maintained by the County. We will have to get an entrance permit for the property, and that will ensure that the entrance will be significantly wide so that our trucks can come from the south and make a right hand turn.

Two other issues that they raised were drainage and the quantity of water for their domestic wells in the area or pollution of those domestic wells. We have handed out a letter from Carl E. Nuzman who is a hydrogeologist, and Harlan Foraker is here today to discuss those findings.

HARLEN FORAKER, CERTIFIED ENGINEERING DESIGN, 810 W. DOUGLAS I would like to address the drainage and the quality and quantity of water that potentially exist under this property. With regard to the drainage, the amount of run off from a property is directly related to the acreage involved in a particular drainage basin. With the development of a sandpit on this property we will be creating a retention pond, which means what falls within the confines of this property, within the lake that will be developed here will be retained on-site. So we will be removing 80 acres or potentially 108 acres if they get that additional water appropriation, and we will be removing that much drainage area from this particular basin which will no longer be contributing runoff to the location to where it goes right now which is most likely Ridge Road. So I would represent to you that the water will be retained on site, and certainly will not create an increase in the problems that currently exist on Ridge Road. There is probably already standing water in the area but what I am saying by retaining the amount of area on-site any runoff of water or rainfall will stay on site and not contribute to more of a problem.

The letter from Mr. Nuzman has represented that by the removal of the sand in this area for a certain amount of the ground there, part of it is occupied by sand and the poorest portions are occupied by water, and it is about 15%. With the removal of that material there is actually going to be more volume water stored on this property as a result of the development of the sandpit, and potentially if there were to be any impact of wells in the area. The effects of recharge coming from water surrounding a particular well there will be more water present on this property because the sand has been removed. The other thing in the letter is the impact on quality. He has mentioned that there has been no reports of contamination due to normal mining operations, in recent history in Kansas.

In 1993 there was some testing done by the local Sedgwick County Health Department and Equus Groundwater Management District to try and determine what the impact of the quality of water, the development of sandpits, and the residential areas around sandpits, and the gist of that report was that there was no certifiable evidence that these operations contaminate groundwater.

DOWNING How much soil do you need to extract to get to the sand? What do you do with that soil, and then how deep do you extract the sand? How deep is the lake going to be?

CHUCK HILL We estimate the average depth of this lake to be somewhere in the vicinity of 40-feet below the groundwater level. It is a very deep sand deposit, and we would expect to have 40-foot depth on this lake. What you have to remove is the topsoil and basically the filter or the overburden down to the water level, and that may vary over portions of the section. But one of the conditions is that at the conclusion of the sand operation you have to remove all the excess overburden and topsoil from the property. We will use a lot of it to build some berms around the lake, and some berms around the perimeter around of the lake. We will sell topsoil and the fill dirt during the operation. But it is our obligation to remove it from the property, and not leave a big mountain there.

JENNIFER LEE, 5335 W. 81st N., VALLEY CENTER KS 67147 I am about 1/2 mile to the east of the sandpit. I put together the letter with the signatures. One issue that we have is the possibility of the drinking water being jeopardized. We are all on well water. That is our drinking water that they would like to expose. If you dig your filter away and you expose that water, you don't have a filter anymore. As far as I know, Quick Sand is not liable for the other trucks that will be coming in and out of this site. What will happen if they are leaking oil, etc? That is a containment berm, and that will be kept in and filter down to the water. We talked about the berms and the winds. There are no windbreaks in that area, and that wind is going to blanket those homes to the north. We were told that there could be over a 100 trucks a day weighing upwards of 85,000 pounds on these county roads. There are no shoulders on these roads. There are deep drainage ditches, and you are going to have these trucks, grain trucks, and school buses competing for use on this road. We are concerned about the noise, and you can't tell me that an operation like this from 6:00 a.m. to dusk that I am not going to hear every truck that is backing up and beeping.

Really this pertains to the zone of influence, you have to realize out where we are, these are large fields where I am. We have over 40 houses on 5-acre lots, and we are just right across the big ditch. The water flows to the northwest and it will affect people. You have no idea what is going on. To me if you dump something in the water that you are drinking then that is what you will be drinking. I think we need to be conservative.

FRANK MONTAGUE, 7936 N. 63rd W., VALLEY CENTER, KS 67147 I am opposed to this operation. My property adjoins it. I worked for nine years at a sandpit. (He offers a lengthy description of how this operation will work).

DUNLAP How often did you have that line break (referring to hydraulic lines on the pumping equipment Mr. Montague described)? How often did you pollute the water?

MONTAGUE I never had a line break. I very seldom polluted the water but it is not impossible. It has been done.

DENISE SPIVEY, 8050 N. 63rd W., VALLEY CENTER, KS 67147 This sandpit will be immediately out my front door. Decisions will be made here that will effect the next 10 years of our lives. I don't have the good luck to live a 1/2 mile from this proposed development. My dirt road is the boundary of the property that Quik Sand wants to buy. I have driven by the sandpit at 53rd Street North and the Big Ditch, and the noise is very noticeable. International Speedway is three miles down the road, and we hear that as well. There is some work going on across the ditch and the beep, beep, beep of the trucks is going to be bad. The reason we bought our home out there 11 years ago was to raise children, have peace and quite, and have a few acres to raise a couple of horses on. I have a 13 and 14-year-old child, and they are starting driving age. I have concerns and fears for my children and this truck traffic. In 1993 when we had the flood around Halloween time we had water within 2 inches getting into our homes.

JENA MERIMAM, 8513 N. Ridge Road I have lived out here for 25 years. I have grandchildren now that are getting on a school bus out there on Ridge Road. My main concern is the pollution and the dust. The workers who work around the sand are required to where respiratory gear and there is no long-term studies on the effects of all the sand and dust. My daughter has heart disease, and she has a hard time oxygenating her blood right now. There are no windbreaks out there. When we have a heavy rain we use canoes to get around there area. There was a bad accident two weekends ago at 73rd and Ridge Road involving a dump truck.

GAROFALO Point out where you live.

DOUG MERIMAN, 8513 N. RIDGE ROAD I have drove a truck for 31 years, and I have hauled the products that these gentlemen are referring to. I see these same guys that have company policies but these drivers are the caption of their ship. It takes a lot of fuel and time to get rolling again, if there is nothing coming or if they think they can make it, they go ahead and pull out. The traffic on Ridge Road is not good now the way that it is. The guys are going to take the shortest way and time is money. On Ridge Road there is not any kind of a shoulder.

LORA NEUFELD, 8712 N. ROSS, VALLEY CENTER, KS 67147 I live north of the tracts of where those tracts are. I have a very high wind area out there where I live. When I moved out there nine years ago I moved out there to have a nice quite one acre lot of land that I could do what I wanted, when I wanted to and I have the peace and quite. I knew there would be other houses coming out there but not for a sandpit. I get the noise from 81 Speedway, which is 2 miles from my house. They cannot tell me they are not going to have that noise.

DAVID HESSLER, 8042 N. 63rd W., VALLEY CENTER, KS 67147 I live on a private road to the east of this proposal. My concern is the people around those other sandpits their property values dropped until they went into the phase of putting in the new homes, and then you could sell your property and get a fair value out of it. But until that time which you are talking about, 10 years, do I sit there on that land, and not be able to do anything with it, and lose money? I don't like the traffic issue either. I drive trucks and I know what the trucks are going to do in this area.

SHEILA REYES, 6400 W. GLENDA, VALLEY CENTER, KS 67147 I took some pictures of other Quik Sand developments. I will have a direct view from my front porch of this sandpit if it goes in. I did not move out there to here this and be in an industrial atmosphere. We have wildlife out there and noise will run them off. I am concerned with the flooding and the pollution of the well water. I just had my windshield replaced and pitted my car because of these trucks. If they are putting more water into the ground then the 12 sandpits that are in the area between the Big Ditch, Tyler Road and 53rd and 73rd right now did they add more water appropriation rights because of all the water that they put in the ground? Is there a limit to the number of sandpits that they can put in an area?

DUNLAP No there really is not a limit by number.

GLENDA CARRUTH, 8321 N. RIDGE ROAD, VALLEY CENTER KS 67147 We have lived here for 40 years. The way I understand it the business will be right out my front door. I planned on living and dying in the same place. Those of you that have traveled on Ridge Road up to Valley Center the water stands there when we have a heavy rain. Every time they put an overlay on Ridge Road it backs more water on us. The wear and tear on Ridge from all of these trucks will cause more maintenance.

AMBER BLISS, 8941 N. ROSS, VALLEY CENTER, KS 67147 There are a number of homes out here. The diesel fumes will enter our homes. There will be noise, pollution and everything else. I know myself I grew up in this area and I know there is a lot of wildlife and through the years they have left the area but I know with this noise and diesel fumes there will be no more in our area.

JOSE DE JESUS RAYMUNDO, 6325 W 77th N., VALLEY CENTER, KS 67147 My English is not so good. I live in front of here where they are going to put this sandpit. I have three kids, and I wanted to raise my kids that could play outside and no traffic. I am concerned about the water and the floods.

CHUCK HILL In terms of the noise, as you know the regulations require that we operate only from 6 a.m. to sunset. This is not going to be like 81 Speedway that has races at night. At sunset the trucks shut down and the dredges shut down. In terms of the pollution of the water, the regulations and conditions that will be imposed will allow the Health Department if they feel it is necessary to put monitoring wells on the property. There is a very strict prohibition on dumping of anything into a sandpit lake. The drainage issues, we didn't create those issues in the area. In the operational plan in the corner there will be about 12 acres set aside for a staging area, and so the entrance will be on this area on Ridge Road and wide enough for the trucks.

GAROFALO How many trucks would be running in and out of there a day?

HILL Probably about 100 trips a day, 100 in and 100 out.

SHERMAN What is going to happen to this property if it is not approved?

HILL It will probably remain farmland. We have a purchase contract contingent on the zoning approval.

SHERMAN Can it be developed without doing this sandpit?

HILL Our Company is not in this for a development. We are in the sand business to supply a needed and necessary product. We are one of the three companies that make sand that meets KDOT's specifications for use in highway projects. It is a product that is needed in this community. Our primary interest is not land development.

SHERMAN When you extract this sand and build this lake, when you are done what will happen to this property?

HILL There is a development plan. We most certainly plan to sell residential lots, and they will be in the staging area down along Ridge Road and south along 77th Street. It will take about 10-12 years to complete the mining operation.

SHERMAN If you move that entrance down a little bit to the south, how will that affect the operation?

HILL If you put the staging area here, it will primarily stay away from these neighbors. No matter where we put it, it will be in front of or by some neighbor.

DUNLAP Part of the requirement is not to waste the land, and that they give us the plan prior to the Conditional Use is voted on.

BISHOP Dale, I missed this but what happened at Valley Center Planning Commission?

MILLER They recommended denial.

BISHOP I am perplexed as to the development plan, and it says that this is the Conditional Use? What is the North Ridge Road CUP? I don't have anything from the Valley Center Planning Commission and the lady mentions something about a letter and I don't have that.

MILLER I don't have anything from the Valley Center Planning Commission. This is the redevelopment plan and if you approve it, and this plan stays this way, then at the time that they finish excavating here, they will have to develop these lots in these locations or at least in general conformance of this, and plat it.

BISHOP I would just like to say that in conformance with plans and policy of Sedgwick County Development Guide depicts this guide for rural usage. I realize that a sandpit is a rural use but I am not sure replacing farmland with 25 homes is consistent with rural use.

WARNER Did the Valley Center Planning Commission deny this?

MILLER Yes.

MOTION: To approve the application. To approve subject to staff recommendation and make the correction in Condition #2 the last sentence should read 10 and not five year time period.

MITCHELL moved, **DOWNING** seconded the motion.

SUBSTITUTE MOTION: To deny the application.

BISHOP moved, **GAROFALO** seconded the motion, and it fails 4-5.

VOTE ON THE ORIGINAL MOTION: Carried 5-4. (BISHOP, SHERMAN, WARNER, GAROFALO opposed)

15. **Case No.: PUD2004-03 PUD12 Amendment #1** – Conway Bank, NA (owner); Casado-McKay Inc, c/o John McKay (agent) Request Amendment to Equestrian Estates Community Unit Plan on property described as;

Lot 14, Block 1, Equestrian Estates, an Addition to Wichita, Sedgwick County, Kansas.. Generally located Approximately one-fourth mile south of Harry on the southwest corner of Triple Crown Court and Triple Crown Street (1733 S. Triple Crown St.).

BACKGROUND: The applicant is requesting to amend PUD #12 Equestrian Estates to permit a neighborhood swimming pool on a 0.37-acre lot zoned "PUD" Planned Unit Development. The property is located on the southwest corner of Triple Crown Court and Triple Crown Street, approximately one-fourth mile south of Harry and east of 127th Street East.

The proposed site is located within Parcel 1 of the PUD. Swimming pools are specifically mentioned as being permitted within the "Reserve" areas, but not on individual lots. The lots in Parcel 1 currently are limited to single-family residential use. This amendment would permit the swimming pool to be located upon Lot 14, Block 1, Equestrian Estates Addition.

A number of single-family residences are under construction or have been recently completed in the vicinity of the site. The neighborhood also has ponds and open space recreational areas between clusters of homes. Parcel 3, zoned PUD, is located two blocks to the west and is developed with a large horse stable, an outdoor riding arena and an large exercise area and riding trails.

The site plan shows a 20-foot by 40-foot swimming pool, five parking spaces (including an ADA designated space), and a clubhouse located west of the pool. Normal parking requirements would be 19 spaces, including one ADA accessible space, based on the size of the pool and clubhouse. Since the clubhouse is large enough to allow gatherings that could include guests arriving in cars, it is recommended that the site plan be revised to increase the parking area to 12 spaces.

Section IV-B.3 of the UZC requires screening in the form of decorative fencing, evergreen vegetation, or landscaped earth berms along the west and south property lines. The Landscape Ordinance requires a landscaped street yard and parking lot screening along the local streets, and a landscape buffer along the west and south property lines.

CASE HISTORY: The subject property is platted as Lot 14, Block 1, Equestrian Estates Addition, recorded October 2, 2001.

ADJACENT ZONING AND LAND USE:

NORTH: "PUD" Residences
EAST: "PUD" Residences
SOUTH: "PUD" Residences
WEST: "PUD" Residences

PUBLIC SERVICES: The subject property has access directly to Triple Crown Court; then to Triple Crown Street, a two-lane residential street. Water, sewer, and other municipal services will be provided to the subject property.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "Low Density Residential" development. This residential category provides for the lowest density of urban residential land use and consists of traditional, single-family detached homes, zero lot line units and cluster subdivisions, as well as schools, churches and similar uses found in such areas. One of the objectives of the Plan is to "develop and maintain a system of parkland, open space and recreational facilities which provide a diverse set of recreational opportunities for existing and future residents." The proposed neighborhood swimming pool is consistent with the Land Use Guide and the identified objective of the Comprehensive Plan.

RECOMMENDATION: The pool and clubhouse would normally require significantly more parking spaces based on Unified Zoning Code requirements. Staff recommends the site plan be revised to provide a minimum of 12 parking spaces, which is still significantly below the UZC standard requirement of 19, but may reasonably be expected to accommodate average size gatherings. In order to provide a reasonable separation with the nearby houses, a minimum landscaped area of eight feet along the streets is recommended. This is the narrowest landscape bed allowed by the UZC by administrative adjustment for conventional residential zoning districts. The buffer on the south and west should be a minimum of 15 feet in width between the clubhouse, pool and deck, and the adjoining residential lots, with the planting materials being solid evergreen around the pool and deck. Based on the information available prior to the public hearing, MAPD staff recommends Amendment #1 PUD #12 Equestrian Estates be APPROVED, subject to the following conditions:

1. The site shall be developed in general conformance with the approved site plan.
2. The subject property shall be developed in accordance with the regulations of the Landscape Ordinance, with the additional requirement of solid evergreen plantings between the pool and deck and the residential property lines to the south and west, per a landscape plan approved prior to the issuance of a building permit.
3. A 15-foot building setback shall be provided on the south and west property lines.
4. Parking shall be no nearer than eight feet from the street on the north and east property lines. A landscaped planting bed with parking lot screening shall be provided to screen the parking lot.
5. A minimum of 12 parking spaces, including one ADA accessible space, shall be provided.
6. Development and use of the subject property for a neighborhood swimming pool shall be in accordance with all applicable federal, state, and local rules and regulations, including building and construction codes, health codes, and operational standards. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
7. The transfer of title of all or any portion of the land included within the Planned Unit Development does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land and be binding upon the present owners, their successors and assigns, unless amended.
8. The applicant shall submit 4 revised copies of the PUD. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Single-family residences, zoned PUD, are under construction or have been recently completed in the vicinity of the site. The neighborhood also has ponds and open space recreational areas between clusters of homes. Parcel 3, zoned PUD, is located two blocks to the west and is developed with a large horse stable, an outdoor riding arena and an large exercise area and riding trails.
2. Extent to which removal of the restrictions will detrimentally affect nearby property: Locating a neighborhood swimming pool and clubhouse within a residential development will introduce more traffic and noise for the nearby residential properties. However, the recommended conditions of approval pertaining to screening and landscaping should address these problems. The proposed neighborhood swimming pool and clubhouse most likely will be an amenity to the neighborhood.

3. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "Low Density Residential" development. This residential category provides for the lowest density of urban residential land use and consists of traditional, single-family detached homes, zero lot line units and cluster subdivisions, as well as schools, churches and similar uses found in such areas. One of the objectives of the Plan is to "develop and maintain a system of parkland, open space and recreational facilities which provide a diverse set of recreational opportunities for existing and future residents." The proposed neighborhood swimming pool is consistent with the Land Use Guide and the identified objective of the Comprehensive Plan. The PUD zoning district allows flexibility in setbacks, parking requirements, and site development requirements so long as it promotes quality urban design and environmentally sensitive development.
4. Impact of the proposed development on community facilities: The proposed swimming pool will increase trips to the site, but the impact should be minimal and will not exceed the capacity of the street.

MOTION: Approve, subject to staff recommendations

JOHNSON moved, **DOWNING** seconded the motion, and it carried (10-0-1). **MCKAY** ABSTAIN.

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16. Case No.: CON2004-30 – Mohsen Etezazi Request Conditional Use to permit vehicle sales on property zoned "LC" Limited Commercial on property described as;

The south 10 feet of the east 52 feet of Lot 8, all of Lots 10 and 12, and the north 10 feet of the east 52 feet of Lot 14, Block 3, Wilson's Addition to Wichita, Sedgwick County, Kansas. Generally located South of Harry and east of Broadway.

BACKGROUND: The applicant is requesting a Conditional Use to allow outdoor vehicle and equipment sales on Lots 10 and 12, and a backyard portion of Lots 8 and 14, all in Block 3, Wilson's Addition. The subject properties are zoned "LC" Limited Commercial. Outdoor Vehicle and Equipment Sales may be permitted with a Conditional Use in the "LC" zoning district.

The subject properties are located south of Harry Street, between Osie Street & Funston Avenue, on the east side of Broadway Avenue. There are older (built in 1907 & 1919) single-family residences abutting the north and south sides of the majority of the subject site, Lots 10 & 12, Block 3, Wilson's Addition. These abutting residences are built on Lots 6 and 8 and Lots 14 and 16, all in Block 3, Wilson's Addition. The applicant proposes to use a 10-foot wide (x) 52-foot long section off of the southeast portion of Lot 8 and the northeast portion of Lot 14 for the car sales site. The applicant owns all of the above-mentioned lots.

The applicant has provided a site plan that contains a concept for landscaping showing proposed plants. The applicant is asking for a variance on the landscape ordinance, which would include allowing planting within the right-of-way (ROW) and the landscaping along the rear property line where it is adjacent to "TF-3" Duplex Residential zoning and residential development. Any variance from the landscaping ordinance would require a waiver by the Planning Director, with approval from the Traffic Engineer to use the street ROW for landscaping.

The subject site is currently developed with a concrete parking area/yard that covers the entire site, which would seemingly exclude the landscaping areas as shown on the site plan. There is one mature tree on the southeast side of the site. The subject site also has the 1,500 square-foot (metal, built 2003) building, which is a combination garage (three bay doors on the front, two bay doors on the back) office, building. A security light is on each side of the building. There is a 6-foot wooden fence around the perimeter of the site, with the exception of the Broadway frontage, which has a heavy pipe fence/parking barrier and rolling pipe gate. The wooden fence provides solid screening between the site and the residential structures east ("TF-3" zoning), north and south of the site. The northwest and southwest portions of the fence are planked on both sides to cover the runners as seen from traffic along Broadway. The site has a pedestal for a pole light. The applicant has one drive onto Broadway and an unpaved alley on its east side.

The zoning along this section of the Broadway corridor is commercial and consists of mixed-use development including older, pre-1930, single-family residences either still being used for single-family residences or having been converted into two-family or multi-family residential. There are also some multi-family residential structures and various commercial uses including numerous car sales lots along this section of Broadway. The Conditional Uses for car sales lots approved for sites in the immediate area included a site one block south of the subject site (CON02-54) and expansion of another car sales lot (CON02-43, attached to CON00-10) two blocks north of the subject site. There is another car sales lot (CU-488) 50-feet north of the subject site. Other recent developments along this section of Broadway include a bank (1992), across Broadway, west of the site, and a Walgreens (2002) on the northwest corner of Broadway & Harry.

Properties east of the site, across the 20-foot alley, are zoned "TF-3" and are developed primarily as single-family residential, although there is a brick duplex directly east of the site. Properties west of the site are zoned "LC", with development including the previously mentioned bank and single-family residential structures with either single-family or multi-family uses. Properties north of the site are zoned "LC" and are developed as a single-family residence and a car sales lot. There were salvage vehicles in the alley north of the subject site behind an existing car sales lot. Properties south of the site are zoned "LC" and are developed as single-family residential and a car sales lot.

CASE HISTORY: The Wilson's Addition was recorded with the Register of Deeds April 9, 1887. A Conditional Use, CON2003-49, for a larger site for car sales, which included the current site, was approved by the MAPC at their January 8, 2003 meeting. The applicant felt he could not meet the conditions of CON2003-49 and withdrew his request in the attached letter. When CON2003-49 was considered the Lots 10 and 12, Block 3, Wilson's Addition, which is most of the current site, were not developed. The applicant had also proposed to develop Lots 6 and 8 and Lots 14 and 16, all in Block 3, Wilson's Addition as part of CON2003-49 for a car lot. The applicant now proposes to use only 10-foot wide (x) 52-foot long section off of the southeast portion of Lot 8 and the northeast

portion of Lot 14 for the car sales site. The current application for a car sales lot is about a 1/3rd the size of CON2003-49. There were no recorded protests to CON2003-49.

ADJACENT ZONING AND LAND USE:

| | | |
|--------|---------------------------|-----------------------------------|
| NORTH: | "LC" Limited Commercial | Single-family, Car sales |
| SOUTH: | "LC" Limited Commercial | Single-family, Car sales |
| EAST: | "TF-3" Duplex Residential | Single-family, duplex |
| WEST: | "LC" Limited Commercial | Bank, single-family, multi-family |

PUBLIC SERVICES: This subject property has access to Broadway, a four-lane arterial with current traffic volumes of approximately 11,000 vehicles per day. The 2030 Transportation Plan estimates that traffic volumes on Broadway will remain approximately 11,000 vehicles per day. Municipal water and sewer services and all other utilities are available to this site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Commercial Locational Guidelines also recommend that auto-related commercial uses should be guided to cluster in areas such as CBD fringe, segments of Kellogg, and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses, and utilities can support these activities.

RECOMMENDATION: Based upon information available prior to the public hearing, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. All requirements of Article III, Section III.D.6.x. of the Unified Zoning Code (UZC) shall be met. Any variance from Article III, Section III-D, 6.x of the UZC would require a waiver approved by the Wichita City Council.
2. In addition to uses permitted in the "LC" Limited Commercial district, the site shall be limited to the sales of cars and light trucks. No sale or rental of trailers, vehicles or trucks larger than pick ups. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business.
3. Any automotive service or repair work conducted on the site shall be entirely within a building. No body or fender work shall be permitted without first obtaining "GC" General Commercial zoning.
4. The applicant shall dedicate by separate instrument a contingent dedication of 22.5 additional feet of street right-of-way along the property's Broadway frontage within six months of final approval of the Conditional Use. The current Subdivision standards for half-street ROW for Broadway, an arterial, is 60-feet
5. Parking spaces for employees and customers shall be provided on the property as required by the UZC and in conformance with the standards established by the City Traffic Engineer. The parking spaces shall be marked and designated for employees and customers and shall not be used for display or storage of vehicles for sale, unless the vehicle is driven by an employee. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business unless additional parking spaces for such businesses are provided per a revised site plan approved by the Planning Director.
6. No temporary display signs are permitted, including the use of commercial flags, banners, portable signs, pennants, streamers, pinwheels, string lights, search lights, bunting and balloons.
7. No outside storage of salvaged vehicles or parts shall be permitted in association with this use.
8. A revised landscape plan shall be submitted showing a landscaped street yard and a landscape buffer along the alley, which shall be provided and maintained on the property as approved by the Planning Director.
9. A revised site plan reflecting the conditions of approval (including Section III.D.6.x. of the Unified Zoning Code) shall be submitted for approval by the Planning Director within six months of approval of the Conditional Use by the MAPC or governing body, as applicable. The site plan shall include the current 6-foot wooden, stockade type fence located on the north, east and south sides of the site, all lighting, including those on the building, the pole fence along the Broadway Avenue frontage, the location and size of the office and garage space within the current building, approved signage and solid screening around the trash receptacle,
10. The site shall be developed in general conformance with the approved site plan and landscape plan. All improvements shown on the approved site plan and landscape plan shall be completed within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
11. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
12. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the neighborhood is that of mixed-use development consisting of single-family and multi-family residential development and various commercial uses including used car sales. Most of the property along Broadway is zoned "LC" Limited Commercial or "GC" General Commercial, with residential zoning limited to areas along the streets east and west of Broadway. The proposed used car lot is consistent with the zoning, uses, and character of the area.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LC" Limited Commercial. The property is apparently suitable for commercial uses to which it has been restricted; however, used car sales is an established use in the area and can be suitable for the subject property if developed according to the recommended conditions of approval.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by the recommended conditions of approval which would limit signage, lighting, noise, and display area practices from adversely impacting nearby property.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. This site is located along Broadway, and the recommended conditions of approval have provisions, which limit noise, lighting, and other adverse impacts. The Commercial Locational Guidelines also recommend that auto-related commercial uses should be guided to cluster in areas such as CBD fringe, segments of Kellogg, and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses, and utilities can support these activities. This site is located along Broadway in an area where auto-related commercial uses already exist.
5. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities if the recommended additional street right-of-way is provided along Broadway. Not providing the recommended additional street right-of-way will hinder the City's ability to provide a roadway that is of sufficient capacity to safely carry future traffic volumes.

JOHN TASSETT We only one problem with this application and that is the staff recommendation Condition #4 which is the dedication of 22.5 additional feet of street right-of-way. The building was built in the current zoning and it is only with the application for a Conditional Use that this 22.5 feet is being taken from this property owner. This is a common problem with the City and with Planning because they use this as a lever to gain additional space without paying for it.

MOTION: To approve subject to staff recommendation and remove the Condition #4 relating to the 22.5 feet dedication.

HENTZEN moved, **MITCHELL** seconded the motion, and it carried (8-1).
(**BISHOP**, opposed)

17. Case No.: ZON2004-48 – Coleman Ventures LLC c/o Don Coleman (owner); Value Place LLC c/o Kevin Stuckey (applicant); Request Zone change from "SF-5" Single-family Residential to "LC" Limited Commercial on property described as;

A tract in the SW/4 of Section 29, Township 27 South, Range 1 W of the 6th P.M., Sedgwick County, Kansas described as beginning at the NE corner of Lot 1, Block A, Quiktrip 8th Addition, Wichita, Sedgwick County, Kansas; thence south along the east line of said Lot 1, 240 feet to a deflection corner in said east line; thence east 290 feet; thence south 21.17 feet; thence east 67 feet; thence north 255 feet; thence west 285 feet; thence north 86.17 feet; thence west 72 feet to a point on the east line of Lot 10, Verda Vista, Sedgwick County, Kansas; thence south 80 feet to the point of beginning. Generally located North of Kellogg and east of Maize.

BACKGROUND: The applicant requests a zone change for the subject property from "SF-5" Single Family to "LC" Limited Commercial. The subject property is a 2.1 acre unplatted tract that is located north of Kellogg and east of Maize. The subject property is currently developed with a residential structure that is proposed to be razed with the site redeveloped. The proposed use of the subject property is to construct a Value Place extended-stay hotel. Access to the subject property is proposed to Maize via an access easement across the Quik Trip property to the west.

The surrounding area is characterized primarily by commercial uses along the Kellogg corridor. Most of the properties along the Kellogg corridor are zoned "LC" Limited Commercial or "GC" General Commercial. There is a significant amount of undeveloped land (both commercially and residentially zoned) along Kellogg that likely will develop in the future with at least some commercial uses with the opening of the limited access Kellogg freeway. Residential properties in the area are located behind the commercial properties that front Kellogg and are primarily zoned "SF-5" Single Family and developed with single-family residences.

CASE HISTORY: The subject property is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-5" Undeveloped
SOUTH: "LC" Quik Trip
EAST: "SF-5" Undeveloped

WEST: "LC" Undeveloped

PUBLIC SERVICES: Access to the subject property is proposed to be to Maize via an access easement across the Quik Trip property located southwest of the subject property. Maize is currently being reconstructed as a four lane arterial street with right and left turn lanes. Current traffic volumes on Maize are approximately 15,000 vehicles per day. The 2030 Transportation Plan projects traffic volumes on Maize to increase to approximately 17,500 vehicles per day and recommends the improvements currently under construction. All municipal services are available to be extended to the subject property.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The request conforms with the Land Use Guide and Commercial Locational Guidelines of the Comprehensive Plan.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED subject to platting the property within one year.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized primarily by commercial uses along the Kellogg corridor. Most of the properties along the Kellogg corridor are zoned "LC" Limited Commercial or "GC" General Commercial. There is a significant amount of undeveloped land (both commercially and residentially zoned) along Kellogg that likely will develop in the future with at least some commercial uses with the opening of the limited access Kellogg freeway. Residential properties in the area are located behind the commercial properties that front Kellogg. The request is consistent with the zoning, uses, and character of the neighborhood.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned "SF-5" Multi Family and is developed with an agriculture-related residential structure. Given the subject property's location near the intersection of a limited access freeway and an arterial street and within a developing commercial area, it is unlikely that continued residential use of the subject property is viable in the long term.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The screening, lighting, and compatibility standards of the Unified Zoning Code, the landscaped street yard, parking lot screening, and buffer requirements of the Landscape Ordinance should limit noise, lighting, and other activity from adversely impacting surrounding residential areas.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The request conforms with the Land Use Guide and Commercial Locational Guidelines of the Comprehensive Plan.
5. Impact of the proposed development on community facilities: No detrimental impacts on community facilities are anticipated as long as cross-lot access to Maize is provided through the platting process.

DUNLAP Isn't that corner still owned by and proposed to be redeveloped by Quik Trip?

KNEBEL There is a Quik Trip under construction on this lot right here. The other two commercial properties that are outside the Kellogg right-of-way are undeveloped, and there are no permits pulled on them yet.

DUNLAP The access will be on that little road?

KNEBEL That access will be determined at the time of platting, but the applicant indicates that they desire to go out to Maize Road.

BISHOP What is the creek?

KNEBEL That is Cowskin creek.

DUNLAP And this will not be contributing to the flooding.

KNEBEL The floodplain cuts across the very northeast corner of the property there. The 500-year floodplain, not the 100-year floodplain?

JAMES ZONKER, 1360 S. MAIZE ROAD, WICHITA KS 67209 There are about four to six houses across the street from this location. Taking a look at the neighborhood and this busy street, it is a quite neighborhood. Along the back of the houses there is a drop-off, and then that drop-off continues to the creek. When you are in the backyards it is like a rural residential environment, then it is a city neighborhood with this nature area back here. Putting a development down here that is going to be visible from these backyards, and I am sure they will put in some trees or a wall and that will be appreciated.

However they are talking about putting in a four-story motel structure that will be sticking up considerably higher than the trees and the wall, and that will be highly visible in the skyline from this location and will dramatically change the character of what you get when you live in this community. I assume it will be well lit at night, and it won't be a dark area anymore. I feel this will affect the

property values. I know one neighbor was concerned about the traffic access and how it backs up. I would be happier if this was a one-story building going in here.

SHERMAN On this part of Kellogg is this the elevated portion or is that further down?

KNEBEL Yes, that part of Kellogg is elevated.

MOTION: To approve subject to staff recommendation.

HENTZEN moved, **DOWNING** seconded the motion, and it carried (9-0).

❖ **PLANNING COMMISSION ITEMS**
18. Other matters/adjournment.

MITCHELL It is my understanding that the Subdivision Committee considered the Subdivision Regulation amendment having to do with public utility easements at their last meeting and their decision was to send that to something for public hearing. I don't know where it is in the process.

MILLER They recommended that we set a date that is consistent with the requirements for advertising to bring it to the MAPC for your consideration. We are preparing the notice.

MITCHELL Is the language that was in the Subdivision Committee agenda what was approved?

MILLER Yes.

DUNLAP We have discussed with MAPC members the Subcommittee appointments and I will forward the selection to the Secretary for changes.

SIMMERING We will change the MAPC roster and a copy will be in your next mail out.

The Metropolitan Area Planning Department informally adjourned at 6:55 p.m.

State of Kansas)
Sedgwick County) ^{ss}

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2004.

John L. Schlegel, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)